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P.C. Martin
TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1934

No. 363 *1*

**EDWARD HINES YELLOW PINE TRUSTEES,
PETITIONERS,**

vs.

**ANNA F. C. MARTIN, F. C. MARTIN, H. P. LEWIS, AND
GEORGE LAWRENCE**

**ON A WRIT OF HABEAS CORPUS TO THE UNITED STATES CIRCUIT
COURT OF APPEALS FOR THE FIFTH CIRCUIT**

WRITING FOR CERTIORARI FILED APRIL 19, 1934

CERTIORARI GRANTED MAY 12, 1934

(80,361)

112 Mass 819

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(30,281)

SUPREME COURT OF THE UNITED STATES

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PETITIONERS,

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ANNA F. C. MARTIN, F. C. MARTIN, H. P. LEWIS, AND
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ON A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT
COURT OF APPEALS FOR THE FIFTH CIRCUIT

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[fol. 1]

Caption—omitted

**IN DISTRICT COURT OF THE UNITED STATES FOR THE
SOUTHERN DIVISION OF THE SOUTHERN DISTRICT OF
THE STATE OF MISSISSIPPI.**

EDWARD HINES YELLOW PINE TRUSTEES

versus

ANNA F. C. MARTIN

BILL OF COMPLAINT AGAINST ANNA F. C. MARTIN

Comes Edwin Hines Yellow Pine Trustees composed of Edward Hines, C. S. Wiehe and L. L. Barth, Trustees under trust agreement [fol. 2] of January 1, 1918, and executing said trust estate under the name of Edward Hines Yellow Pine Trustees, and exhibit their bill of complaint against Anna F. C. Martin, a resident of Pass Christian, Mississippi, and would respectfully show unto the Court that the complainants are residents and citizens of the State of Illinois, and that the defendant herein is a resident citizen of the State of Mississippi, with a post office address at Pass Christian, said State of Mississippi.

Complainants would further show unto the Court that they are the real, true, legal and equitable owners of the following described lands now situated in the County of Pearl River, formerly Marion County, State of Mississippi, to-wit: NE $\frac{1}{4}$ of SE $\frac{1}{4}$, Section 36, T. 2 South R. 15 West, situated in said county. Complainants would show that the value of the said land, the subject of this litigation, and out of which this controversy arises, is in excess of three thousand dollars.

Complainants deraign title to the above described lands as follows:

a. By Act of Congress approved September 28th, 1850, 1850, the said lands — donated to the State of Mississippi; thereafter, in accordance with an Act of the Legislature of the State of Mississippi, approved on the 8th day of April, 1871, the said lands were patented to the Pearl River Improvement & Navigation Company, under date June 27th, 1871, said patent being found of record in Book G, pp. 418-428, Record of Deeds, Marion County, in which said lands were then situated, and in book 4, pp. 204-205, Record of Deeds, Pearl River County, State of Mississippi, where same are now located.

b. The said Pearl River Improvement & Navigation Company, for a valuable consideration, on November 20th, 1872, conveyed the [fol. 3] said lands to M. S. Baldwin, said deed being found of record in Book G, pp. 428-437, Record of Deeds, Marion County, and Book 4, pp. 215-225, Record of Deeds, Pearl River County.

c. That thereafter, and on the 17th day of April, 1873, the said M. S. Baldwin, by his attorney, in fact, Samuel Vose for a valuable consideration conveyed the said lands to Israel Hall by deed of

record Book 15, pp. 526 et seq., Record of Deeds, Pearl River County, and also recorded in Book 4, p. 242 said records.

d. Deraigning complainants' title further, they show unto the Court that on the 30th day of April, 1889, the said Israel Hall departed this life leaving a last will and testament which was duly probated in all respects as required by law, the same being found of record in the Record of Wills, County of Marion, State of Mississippi, Book —, pp. —, and in the Record — Wills, Pearl River County, State of Mississippi, Book 1, pp. 35 and 36, by which last will and testament his wife Olivia V. Hall, was named as his sole legatee.

4. Thereafter, on July 23, 1900, the said Olivia B. Hall by quit claim deed conveyed the said lands to Charlotte H. Eastman, the said deed being in conveyance of a theretofore executed but unrecorded deed from the said Israel Hall to Charlotte H. Eastman, wife of Sidney C. Eastman, said deed being executed about the year 1887, and the deed of conveyance from the said Olivia B. Hall to Charlotte H. Eastman being found of record in Book 12, pp. 222, Record of Deeds, Pearl River County, State of Mississippi.

[fol. 4] On May 13th, 1904, M. S. Baldwin executed and delivered unto the said Charlotte H. Eastman, a further deed to the said land, ratifying and confirming a previous deed executed by Samuel Vose, as attorney for the said Baldwin, in April 1873, and found of record in Book G, pp. 477-482, Land Records, Marion County, State of Mississippi: The deed of confirmation being recorded Book 14, p. 128, Record of Deeds Pearl River County, State of Mississippi.

g. Thereafter, and on July 5, 1905, for a valuable consideration the said Charlotte H. Eastman and Sidney C. Eastman by warranty deed conveyed the said lands to the Wyatt Lumber Company, by deed of record, Book 14, pp. 85-87, Records of Deeds, Pearl River County State of Mississippi.

h. Thereafter and on January 1, 1918, the said Wyatt Lumber Company conveyed the same to Edward Hines, C. F. Wiehe and L. L. Barth, Trustees of the Edward Hines Yellow Pine Trustees, a Trust Estate, by quit claim deed found of record in Book 25, pp. 259-261, Record of Deeds, Marion County, State of Mississippi. Reference to the above instruments and the records in which the same are recorded are prayed to be taken and considered as exhibits to this bill as if the same were copied herein.

Complainants are informed and believe, that the defendant herein is asserting some right — title in and to the said land by virtue of some claim alleged to have originated in a patent said to have been issued by the State of Mississippi therefor to one Mose Mitchell. That the said patent is claimed to have been issued by the State of Mississippi to the said Mitchell, December 7, 1883; and the said Mitchell [fol. 5] is alleged to have conveyed the said land to S. L. Woolridge on December 27, 1883; and the said Woolridge is alleged to have conveyed same to Eugene Martin, January 23, 1885; and the said Martin is alleged to have conveyed the same to J. G. Barrett, January, 23, 1885; and the said Barrett is alleged to have conveyed same to Hy. Clifton Rodes, July 21, 1888; and the said Rodes is alleged

to have conveyed same to the Southern Pine Company, August 6, 1889; and the said Southern Pine Company is alleged to have conveyed the said NE¼ of SE¼, 36-2-15 to the defendant Anna F. C. Martin, said conveyance as to the date of 26 day of July, 1909.

Complainants would further show unto the Court that the lands involved in this suit are a part of a large body of wild and timbered — granted by the State of Mississippi under the said Act of April 8, 1871, to the Pearl River Improvement & Navigation Company, and coming to complainants' predecessors in title from the same source and *thought* the same deraignment of title and concerning which there has been in years past litigation between complainants' predecessors in title and the predecessors in title of the defendant, who from time to time asserted a pretended title to said lands based upon the alleged patents of the State of Mississippi, issued years after the lawful patents through which complainants claim, as set out hereinabove.

Complainants would further show that the defendant asserts a pretended title coming to him through the Southern Pine Company, a corporation, and Eugene Martin, the source of which is an alleged patent issued by the State of Mississippi more than twelve years after the lawful and rightful patent through which complainants' claim was issued, all as set out hereinabove, and complainants would [fol. 6] further show that the said Southern Pine Company was at one time, and is now as far as the records show, a corporation under the laws of the State of Mississippi, domiciled in the City of Vicksburg, and that the President of the said corporation, and who likewise owned all, or practically, of the stock therein, *and* was the said Eugene Martin, who was the dominant power and who absolutely controlled the policies and actions of the said corporation, and — whose directions the various assertions and pretense of the title hereinabove referred to have been made.

Complainants would show unto the Court that in the year 1905 in a controversy litigated in the District Court of the United States for the Southern Division of the Southern District of Mississippi, between the said Southern Pine Company and Mrs. Olivia B. Hall, complainants' predecessor in title, and which the title and claims of said Mrs. Olivia B. Hall, and the pretended title of the Southern Pine Company, were as to lands and titles exactly similar to those under which the land here in controversy are held and claimed, the title of the said Mrs. Hall, complainants' predecessor, was upheld and declared to be legal and valid, the decision of the Circuit Court of Appeals for the Fifth Circuit and by the United States Supreme Court, as reported in 105 Fed. Rep., p. 84, 44 C. C. A., p. 363, and 180 U. S. p. 639. That notwithstanding this, thereafter the said Southern Pine Company continued to assert a claim or title to other lands similar as to title, among them being the four forties here in controversy, which lands, though exactly the same as to source and deraignment of title as those covered by the litigation hereinabove referred to, had, complainants are advised, through inadvertence or mistake been left out of the pleadings and decree in that cause and on the 29th day of September, 1910, the said Southern Pine Com-

[fol. 7] pany brought suit in the Chancery Court of Pearl River County, Mississippi, against the Wyatt Lumber Company, one of the defendant's predecessors in title, claiming title to the identical lands here involved, averring that they were the true and lawful owner thereof, and asserting their title from the same source and through the same chain of title as hereinabove set out.

Complainants would further show that the said suit was by the defendant therein immediately removed into the District Court of the United States for the Southern Division of the Southern District of Mississippi, whereupon the said Southern Pine Company dismissed its said suit and bill without prejudice, and at its own cost, as appears from the Minutes of said Court, and to which reference is here made.

Complainants would further show that thereafter on October 23, 1911, the defendant herein filed a suit as to the above described land against the Wyatt Lumber Company, complainants' predecessor in title, the said suit having been filed in the Chancery Court of Pearl River County, Mississippi, the purpose of which suit was an attack upon the title of the said Wyatt Lumber Company, and for the purpose of establishing the title of the defendants herein.

Your complainants would further show that upon the filing in the said Chancery Court of Pearl River County of the last mentioned suit that the defendant therein, the Wyatt Lumber Company, filed its petitions and bonds, all as required and conditioned by law, for the removal of the said suit to the United States District Court for the Southern Division of the Southern District of the State of Mississippi, and in which petitions it was charged that the said Southern Pine Company had been for years and was then resorting [fol. 8] to every possible device to avoid and evade the jurisdiction of the Federal Courts, and especially of the District Court of the United States for the Southern Division of the Southern District of Mississippi, and that, with that end in view the said Southern Pine Company, seeking to destroy the jurisdiction of the Federal Courts, and of the said District Court of the United States for the Southern Division of the Southern District of Mississippi, attempted fraudulently to pretend to convey its title to these lands, and in doing so to divide the same so that the amount held in each particular case, and conveyed to each particular vendee would be so small in value as to be below the jurisdiction of the said United States District Court, and therefore, and in pursuance of the said fraudulent plan and scheme to avoid the jurisdiction of the said States District Court, did, prior, to the institution of the suit and the filing of the bill in this case, pretend to convey the said lands away as follows, that is to say, did pretend to convey the NE $\frac{1}{4}$ of SE $\frac{1}{4}$ of said Section 36, T. 2 S. R. 15 West to Anna F. C. Martin, and did at the same time, and as petitioners are advised and believe on the same date, pretend to convey to F. C. Martin, a portion of the said lands, to-wit: SE $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 36, T. 2 S. R. 15 West, and did at the same time and as petitioners are advised and believe on the same date pretend and attempt to convey to Cecile Dowling, the SE $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 36, T. 2 S. R. 15 West, and did at the

same time and as petitioners are advised and believe on the same date, pretend to convey to D. W. Blake the SW $\frac{1}{4}$ of NW $\frac{1}{4}$ of said Section 36, T. 2 S. R. 15 West, and the sole object of said pretended conveyances being to divide the said land so that the amount and holdings placed in the name of each particular vendee [fol. 9] should be worth less than the sum of \$3,000.00, and thereby attempt to defeat the removal of the said controversies into the said District Court of the United States for the Southern Division of the Southern District of Mississippi.

The said petitions further charged that the said pretended conveyances were, and are simulated and pretended conveyances, that they were not conveyances in fact and were never intended or designed to pass the title claimed by said vendor into the said vendee, the sole object being to place the title in said vendees, leaving the equitable title and the real control thereof still in the said Southern Pine Company, which corporation has since said pretended conveyances and with the knowledge and consent of said vendees continued to claim and assert title thereto, to attempt to exercise acts of ownership thereover and to sue to confirm its title thereto.

The said petitions further charged that none of the said vendees paid anything for the said conveyances, which were wholly voluntary, colorable and simulated, and that the said vendees and each of them held the naked legal title to said lands, that is to say, whatever title the said Southern Pine Company had and could convey, in trust for, and for the benefit and use of the said Southern Pine Company, who is the equitable and beneficial owner thereof.

It was further charged in the petitions that practically all of the stock of the said Southern Pine Company is owned by Eugene Martin, the President, who absolutely controls and dictates the policy and conduct of the said corporation; that F. C. Martin is the son of the said Eugene Martin; that Anna F. C. Martin is the wife of the said Eugene Martin; that W. D. Blake is the brother-in-law, [fol. 10] or other near relative of the said Eugene Martin, and that Cecile Dowling is either an employe or clerk of the said corporation, or is otherwise wholly under the control thereof, insofar as the holding of the said lands, the legal title to which was ostensibly placed in her, is concerned. And the said vendees, and each of them, hold the legal title to said lands in trust, for, and for the benefit of the said Southern Pine Company, which is the true, real and equitable owner of whatever claim may be set up and urged under the claim of title set up in complainant's bill, solely for the purpose of defeating the removal of this cause into the United States District Court, and for no other purpose, and as a trustee for the said Southern Pine Company.

Your complainants aver that thereafter each of the said units or causes of action was by the said Wyatt Lumber Company, its predecessor in title, by proper order of the Chancery Court of Pearl River County removed to the said United States District Court for the Southern Division of the Southern District of the State of Mississippi, and the record in each case was filed in the said District Court February 27, 1912; and that thereafter the several plaintiffs

[fol. 7] pany brought suit in the Chancery Court of Pearl River County, Mississippi, against the Wyatt Lumber Company, one of the defendant's predecessors in title, claiming title to the identical lands here involved, averring that they were the true and lawful owner thereof, and asserting their title from the same source and through the same chain of title as hereinabove set out.

Complainants would further show that the said suit was by the defendant therein immediately removed into the District Court of the United States for the Southern Division of the Southern District of Mississippi, whereupon the said Southern Pine Company dismissed its said suit and bill without prejudice, and at its own cost, as appears from the Minutes of said Court, and to which reference is here made.

Complainants would further show that thereafter on October 23, 1911, the defendant herein filed a suit as to the above described land against the Wyatt Lumber Company, complainants' predecessor in title, the said suit having been filed in the Chancery Court of Pearl River County, Mississippi, the purpose of which suit was an attack upon the title of the said Wyatt Lumber Company, and for the purpose of establishing the title of the defendants herein.

Your complainants would further show that upon the filing in the said Chancery Court of Pearl River County of the last mentioned suit that the defendant therein, the Wyatt Lumber Company, filed its petitions and bonds, all as required and conditioned by law, for the removal of the said suit to the United States District Court for the Southern Division of the Southern District of the State of Mississippi, and in which petitions it was charged that the said Southern Pine Company had been for years and was then resorting [fol. 8] to every possible device to avoid and evade the jurisdiction of the Federal Courts, and especially of the District Court of the United States for the Southern Division of the Southern District of Mississippi, and that, with that end in view the said Southern Pine Company, seeking to destroy the jurisdiction of the Federal Courts, and of the said District Court of the United States for the Southern Division of the Southern District of Mississippi, attempted fraudulently to pretend to convey its title to these lands, and in doing so to divide the same so that the amount held in each particular case, and conveyed to each particular vendee would be so small in value as to be below the jurisdiction of the said United States District Court, and therefore, and in pursuance of the said fraudulent plan and scheme to avoid the jurisdiction of the said States District Court, did, prior, to the institution of the suit and the filing of the bill in this case, pretend to convey the said lands away as follows, that is to say, did pretend to convey the NE $\frac{1}{4}$ of SE $\frac{1}{4}$ of said Section 36, T. 2 S. R. 15 West to Anna F. C. Martin, and did at the same time, and as petitioners are advised and believe on the same date, pretend to convey to F. C. Martin, a portion of the said lands, to-wit: SE $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 36, T. 2 S. R. 15 West, and did at the same time and as petitioners are advised and believe on the same date pretend and attempt to convey to Cecile Dowling, the SE $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 36, T. 2 S. R. 15 West, and did at the

same time and as petitioners are advised and believe on the same date, pretend to convey to D. W. Blake the SW $\frac{1}{4}$ of NW $\frac{1}{4}$ of said Section 36, T. 2 S. R. 15 West, and the sole object of said pretended conveyances being to divide the said land so that the amount and holdings placed in the name of each particular vendee [fol. 9] should be worth less than the sum of \$3,000.00, and thereby attempt to defeat the removal of the said controversies into the said District Court of the United States for the Southern Division of the Southern District of Mississippi.

The said petitions further charged that the said pretended conveyances were, and are simulated and pretended conveyances, that they were not conveyances in fact and were never intended or designed to pass the title claimed by said vendor into the said vendee, the sole object being to place the title in said vendees, leaving the equitable title and the real control thereof still in the said Southern Pine Company, which corporation has since said pretended conveyances and with the knowledge and consent of said vendees continued to claim and assert title thereto, to attempt to exercise acts of ownership thereover and to sue to confirm its title thereto.

The said petitions further charged that none of the said vendees paid anything for the said conveyances, which were wholly voluntary, colorable and simulated, and that the said vendees and each of them held the naked legal title to said lands, that is to say, whatever title the said Southern Pine Company had and could convey, in trust for, and for the benefit and use of the said Southern Pine Company, who is the equitable and beneficial owner thereof.

It was further charged in the petitions that practically all of the stock of the said Southern Pine Company is owned by Eugene Martin, the President, who absolutely controls and dictates the policy and conduct of the said corporation; that F. C. Martin is the son of the said Eugene Martin; that Anna F. C. Martin is the wife of the said Eugene Martin; that W. D. Blake is the brother-in-law, or other near relative of the said Eugene Martin, and that Cecile Dowling is either an employe or clerk of the said corporation, or is otherwise wholly under the control thereof, insofar as the holding of the said lands, the legal title to which was ostensibly placed in her, is concerned. And the said vendees, and each of them, hold the legal title to said lands in trust, for, and for the benefit of the said Southern Pine Company, which is the true, real and equitable owner of whatever claim may be set up and urged under the claim of title set up in complainant's bill, solely for the purpose of defeating the removal of this cause into the United States District Court, and for no other purpose, and as a trustee for the said Southern Pine Company.

Your complainants aver that thereafter each of the said units or causes of action was by the said Wyatt Lumber Company, its predecessor in title, by proper order of the Chancery Court of Pearl River County removed to the said United States District Court for the Southern Division of the Southern District of the State of Mississippi, and the record in each case was filed in the said District Court February 27, 1912; and that thereafter the several plaintiffs

in the said four suits appeared, and each made motions to remand and to continue the same, and each of which said motions to continue was by the Court sustained, and the said causes continued, all as appears from the Minutes and Docket Entries of the said District Court of the United States, and to which reference is here made; and since the time of said continuance no further step has been taken by the complainants in the said causes, or by either of them. Your complainants would further show that thereafter, and on February 26th, 1918, each of the said suits was dismissed in the said District Court under Equity Rule No. 57, as appears from [fol. 11] the Docket Entries in said Court to which reference is likewise here made.

Your complainants would further show unto the Court, that up to the date of the filing of this bill, and since the order of continuance hereinabove referred to, and since the dismissal of the said four suits or causes in the United States District Court, the complainants therein, or either of them, have taken no steps to prosecute or revive the same, and they have, therefore, in effect and to all intents and purposes, abandoned even any simulated or pretended claim to the said lands, and complainants aver and would show unto the Court that it had now been more than ten years since the filing of the said suits, during all of which time the complainants therein have stood by and permitted this complainant and his predecessors in title to pay the taxes on the said lands, and to be and to remain in the active possession and control thereof; and your complainants aver that on account of the negligence and laches of the defendant herein and her predecessors in title, they should not now be permitted to assert any right, title or interest in or to the said lands, or to interfere with your complainants in their ownership, possession and control thereof; and your complainants would further show unto the Court that it has been more than ten years since the filing of the four said suits and since even a pretended right to bring an action as to these lands, or any part thereof, has first accrued to the defendant herein, or to some person through whom she claims, and complainants say that the right of the defendant herein or any person to claim said lands through the said Southern Pine Company, or the said Martin, is now barred by the said statutes of the State of Mississippi.

[fol. 12] Your complainants would further show unto the Court that not only is the defendant herein and his predecessors in title precluded by their negligence and laches and by the statutes of the State of Mississippi from now asserting any right, title or interest in and to the said lands, or any part thereof, but she would further show unto the Court that the said lands have for a period of more than ten years next preceding the filing of this bill been in the open, visible, notorious, exclusive and continuous adverse possession of this complainant and her predecessors in title, claiming same against the whole world, during all of which period of time complainant and his predecessors in title paid the taxes thereon and made such use and occupation of the said lands as the same were capable of.

Your complainants would respectfully show unto the Court that both they and their immediate and remote grantors bought the said land for a valuable consideration and good faith, and upon a clean record title from the State of Mississippi on down to this complainant, predicated upon a patent from the State of Mississippi antedating the patent upon which complainants are informed the defendant herein is now asserting title to said land; that he and his said grantors are innocent purchasers of value as to said land. Complainants further aver that the patent from the State of Mississippi to the said Pearl River Improvement & Navigation Company, upon which their title is founded, constitutes a contract between the said Pearl River Improvement & Navigation Company and the said State of Mississippi, and upon which their title in and to the said land is founded; and they aver that they are now protected in their title to the said land by Article —, Section — of the Constitution of the United States, which they now specifically plead.

[fol. 13] Complainants are informed and believe, and therefore, charge that the defendant herein, although not the real, true and legal owner of said land, and although she has no right or title thereon, is asserting some claim and title, and pretending to have some right and interest in and to the said land, which your complainants aver is wholly a pretended claim of title, and as such casts a doubt, cloud and suspicion upon the rightful ownership and real title and ownership of your complainants in and to said land, and which said alleged title complainants say is calculated to lessen and diminish and does actually lessen and diminish the value of said land to these complainants, and would and does prevent a sale thereof for the actual or real value of said property.

Your complainants would further show unto the Court that they were at the time of the institution of this suit and have been at all times since, and are now citizens of the State of Illinois, and that the defendant herein is, and has been at all said times a citizen of the State of Mississippi, as aforesaid, that this is a suit of a civil nature of which this Court has original jurisdiction, and is a suit between citizens of different states; that the matter here in controversy exceeds, exclusive of interest and costs, the sum or value of Three Thousand (\$3,000.00) Dollars.

Wherefore, premises considered, complainants pray that the said defendant be summoned as required by law, to appear before this Honorable Court at the next regular term thereof, to-wit, — —, — —, then and there to plead, answer or demur to the allegations of this bill of complaint, and that she be required to set out in her said answer all the particulars of her said pretended right or title [fol. 14] in and to the said land, and that on a final hearing of this cause complainants pray that this Court will decree the said patent and the several deeds, instruments of pretended title relied upon by the defendant herein, may be each and all cancelled and held as naught, and that the defendant shall be perpetually enjoined from setting up or asserting any claim of title or interest in and to the said lands, adverse to the lawful claim and ownership of these com-

plainants, and that these complainants may be decreed to be the sole and only real, true, legal and equitable owners of the said described lands. And complainants further pray that they may have such other, further and general relief as in equity and good conscience they are entitled to have. And as in duty bound complainants will ever pray.

Davis, Wallace & George; T. J. Wills, Attorney for Complainants.

Jurat showing the foregoing was duly sworn to by T. J. Wills. Omitted in printing.

[fol. 15]

IN UNITED STATES DISTRICT COURT

[Title omitted]

BILL OF COMPLAINT AGAINST F. C. MARTIN

Comes Edward Hines Yellow Pine Trustees composed of Edward Hines, C. F. Wieche and L. L. Barth, Trustees under trust agreement of January 1, 1918, and executing said trust estate under the name of Edward Hines Yellow Pine Trustees, and exhibit their bill of complaint against F. C. Martin, a resident citizen of Pass Christian, Mississippi, and would respectfully show unto the Court that the complainants are residents and citizens of the State of Illinois, and that the defendant herein is a resident citizen of the State of Mississippi, with a post office address at Pass Christian, said State of Mississippi.

Complainants would further show unto the Court that they are the real, true, legal and equitable owners of the following described lands now situated in the County of Pearl River, formerly Marion County, State of Mississippi, to-wit: S. E. $\frac{1}{4}$ of S. E. $\frac{1}{4}$, Section 36 T. 2 South, R. 15 West, situated in said county. Complainants would show that the value of the said land, the subject of this litigation, and out of which this controversy arises, is in excess of three thousand dollars.

Complainants arraign title to the above described lands as follows:

a. By Act of Congress approved September 28th, 1850, the said lands were donated to the State of Mississippi; thereafter, in accordance with an Act of the Legislature of the State of Mississippi approved on the 8th day of April, 1871, the said lands were patented to the Pearl River Improvement & Navigation Company, under date June 27th, 1871, said patent being found of record in Book G., pp. 418-428, Record of Deeds, Marion County, in which said lands were then situated, and in Book 4, pp. 204-205, Record of Deeds, Pearl River County, State of Mississippi, where same are now located.

b. The said Pearl River Improvement & Navigation Company, for a valuable consideration, on November 20th, 1872, conveyed the said lands to M. S. Baldwin, said deed being found of record in Book G, pp. 428-437, Record of Deeds, Marion County, and Book 4, pp. 215-225, Record of Deeds, Pearl River County.

c. That thereafter, and on the 17th day of April, 1873, the said M. S. Baldwin, by his attorney-in-fact, Samuel Vose, for valuable consideration conveyed the said lands to Israel Hall by deed of record Book 15, pp. 526, et seq., Record of Deeds, Pearl River County, and also recorded in Book 4, p. 242, said records.

d. Deraignig complainants' title further, they show unto the Court that on the 30th day of April, 1889, the said Israel Hall departed this life leaving a last will and testament which was duly probated in all respects as required by law, the same being found of record in the Record of Wills, County of Marion, State of Mississippi, Book —, pp. —, and in the Record of Wills, Pearl River County, State of Mississippi, Book 1, pp. 35 and 36, by which said last will and testament his wife, Olivia V. Hall, was named as his sole legatee.

[fol. 17] e. Thereafter, on July 23, 1900, the said Olivia B. Hall, by quit claim deed conveyed the said lands to Charlotte H. Eastman, the said deed being in confirmation of a theretofore executed but unrecorded deed from the said Israel Hall to Charlotte H. Eastman, wife of Sidney C. Eastman, said deed being executed about the year 1887, and the deed of confirmation from the said Olivia B. Hall to Charlotte H. Eastman being found of record in Book 12, pp. 222, Record of Deeds, Pearl River County, State of Mississippi.

f. On May 13th, 1904, M. S. Baldwin executed and delivered unto the said Charlotte H. Eastman, a further deed to the said land, ratifying and confirming a previous deed executed by Samuel Vose, as attorney for the said Baldwin, in April 1873, and found of record in Book G, pp. 477-482, Land Records, Marion County, State of Mississippi. This deed of confirmation being recorded Book 14, p. 128, Record of Deeds, Pearl River County, State of Mississippi.

g. Thereafter, and on July 5, 1905, for a valuable consideration the said Charlotte H. Eastman and Sidney C. Eastman by warranty deed conveyed the said lands to the Wyatt Lumber Company, by deed of record, Book 14, pp. 85-87, Record of Deeds, Pearl River County, State of Mississippi.

h. Thereafter, and on January 1, 1918, the said Wyatt Lumber Company conveyed the same to Edward Hines, C. F. Wiehe and L. L. Barth, Trustees of the Edward Hines Yellow Pine Trustees, a Trust Estate, by quit-claim deed found of record in Book 25, pp. 259-261, Record of Deeds, Marion County, State of Mississippi. Reference to the above instruments and the records in which the same are recorded are prayed to be taken and considered as exhibits to [fol. 18] this bill as if the same were copied herein.

Complainants are informed and believe, that the defendant herein is asserting some right or title in and to the said land by virtue of some claim alleged to have originated in a patent said to have been issued by the State of Mississippi therefore to one Mose Mitchell. That the said patent is claimed to have been issued by the State of Mississippi to the said Mitchell, December 7, 1883; and the said Mitchell is alleged to have conveyed the said land to S. L. Woolridge on December 27, 1883; and the said Woolridge is alleged to have conveyed same to Eugene Martin, January 23, 1885; and the said Martin is alleged to have conveyed same to J. G. Barrett, January 23, 1885; and the said Barrett is alleged to have conveyed same to Hy. Clifton Rodes, July 21, 1888; and the said Rodes is alleged to have conveyed same to the Southern Pine Company, August 6, 1889; and the said Southern Pine Company is alleged to have conveyed the said S. E. $\frac{1}{4}$ of S. E. $\frac{1}{4}$ 36-2-15 to the defendant, F. C. Martin, said conveyance as of the date of — —, — —.

Complainants would further show unto the Court that the lands involved in this suit are a part of a large body of wild and timbered lands granted by the State of Mississippi under the said Act of April 8, 1871, to the Pearl River Improvement & Navigation Company, and coming to complainants' predecessors in title from the same source and through the same derangement of title and concerning which there has been in years past litigation between complainants' predecessors in title and the predecessors in title of the defendant, who have from time to time asserted a pretended title to said lands based upon the alleged patents of the State of Mississippi issued years [fol. 19] after the lawful patents through which complainants claim, as set out hereinabove.

Complainants would further show that the defendant asserts a pretended title coming to him through the Southern Pine Company, a corporation, and Eugene Martin, the source of which is an alleged patent issued by the State of Mississippi more than twelve years after the lawful and rightful patent through which complainants' claim was issued, all as set out hereinabove, and complainants would further show that the said Southern Pine Company was at one time, and is now as far as the records show, a corporation under the laws of the State of Mississippi, domiciled in the City of Vicksburg, and that the president of the said corporation, and who likewise owned all, or practically all, of the stock therein, was the said Eugene Martin, who was the dominant power and who absolutely controlled the policies and actions of the said corporation, and under whose direction the various assertions and pretense of title hereinabove referred to have been made.

Complainants would show unto the Court that in the year 1905 in a controversy litigated in the District Court of the United States for the Southern Division of the Southern District of the State of Mississippi, between the said Southern Pine Company and Mrs. Oliva B. Hall, complainants' predecessor in title, and which the title and claims of said Mrs. Oliva B. Hall, and the pretended title of the Southern Pine Company, were as to lands and titles exactly similar to those under which the lands here in controversy are held

and claimed; the title of the said Mrs. Hall, complainants' predecessor, was upheld and declared to be legal and valid, the decision of the Circuit Court of Appeals for the Fifth Circuit and by the United [fol. 20] States Supreme Court, as reported in 105 Fed. Rep. p. 84, 44 C. C. R. p. 363, and 180 U. S. p. 639. That notwithstanding this, thereafter the said Southern Pine Company continued to assert a claim or title to other lands similar as to title, among them being the four forties here in controversy, which lands, though exactly the same as source and deraignment of title as those covered in the litigation hereinabove to, had, complainants are advised, through inadvertance or mistake, been left out of the pleadings and decree in that cause, and on the 29th day of September, 1910, the said Southern Pine Company brought suit in the Chancery Court of Pearl River County, Mississippi, against the Wyatt Lumber Company, one of the defendant's predecessors in title, claiming title to the identical lands here involved, averring that they were the true and lawful owner thereof, and asserting their title from the same source and through the same chain of title as hereinabove set out.

Complainants would further show that the said suit was by the defendant therein immediately removed into the District Court of the United States for the Southern Division of the Southern District of Mississippi, whereupon the said Southern Pine Company dismissed its suit and bill without prejudice, and at its own cost, as appears from the Minutes of said Court, and to which reference is here made.

Complainants would further show that thereafter on October 23, 1911, the defendant herein filed a suit as to the above described land against the Wyatt Lumber Company, complainants' predecessor in title, the said suit having been filed in the Chancery Court of Pearl River County, Mississippi, the purpose of which suit was an attack upon the title of the said Wyatt Lumber Company, and for the purpose of establishing the title of the defendant herein.

[fol. 21] Your complainants would further show that upon the filing in the said Chancery Court of Pearl River County of the last mentioned suit that the defendant therein, the Wyatt Lumber Company, filed its petitions and bonds, all as required and conditioned by law, for the removal of the said suit to the United States District Court for the Southern Division of the Southern District of the State of Mississippi, and in which petitions it was charged that the said Southern Pine Company had been for years and was then resorting to every possible device to avoid and evade the jurisdiction of the Federal Courts, and especially of the District Court of the United States for the Southern Division of the Southern District of Mississippi, and that, with that end in view the said Southern Pine Company seeking to destroy the jurisdiction of the Federal Courts, and of the said District Court of the United States for the Division of the Southern District of Mississippi, attempted fraudulently to pretend to convey its title to these lands, and in doing so to divide the same so that the amount held in each particular case, and conveyed to each particular vendee would be so small in value as to be below the jurisdiction of the said United States District Court, and therefore, and in the pursuance of the said fraudulent plan and scheme to avoid the jurisdiction of the said United States District

Court, did, prior to the institution of the suit and the filing of the bill in this case, pretend to convey the said lands away as follows, that is to say did pretend to convey the N. E. $\frac{1}{4}$ of S. E. $\frac{1}{4}$ of said Section 36, T. 2 S. R. 15 West, to Anna F. C. Martin, and did at the same time, and as petitioners are advised and believed on the same date, pretend to convey to F. C. Martin, a portion of the said lands, to-wit: S. E. $\frac{1}{4}$ of S. E. $\frac{1}{4}$ of Section 36, T. 2 S. R. 15 West, and [fol. 22] did at the same time and as petitioners are advised and believe on the same date, pretend and attempt to convey to Cecile Dowling, the S. E. $\frac{1}{4}$ of N. W. $\frac{1}{4}$ of Section 36, T. 2 S. R. 15 West, and did at the same time and as petitioners are advised and believe on the same date, pretend to convey to D. W. Blake the S. W. $\frac{1}{4}$ of N. W. $\frac{1}{4}$ of said Section 36, T. 2 S. R. 15 West, and the sole object of said pretended conveyances being to divide the said land so that the amount and holdings placed in the name of each particular vendee should be worth less than the sum of \$3,000.00, and thereby attempt to defeat the removal of the said controversies into the said District Court of the United States for the Southern Division of the Southern District of Mississippi.

The said petitions further charged that the said pretended conveyances were, and are simulated and pretended conveyances that they were not conveyances in fact and were never intended or designed to pass the title claimed by said vendor into the said vendees, the sole object being to place the record title in said vendees, leaving the equitable title and the real control thereof still in the said Southern Pine Company, which corporation has since said pretended conveyances and with the knowledge and consent of said vendees continued to claim and assert title thereto, to attempt to exercise acts of ownership thereover and to sue to confirm its title thereto.

The said petitions further charged that none of the said vendees paid anything for the said conveyances, which were wholly voluntary, colorable and simulated, and that the said vendees and each of them held the naked legal title to said lands, that is to say, whatever title the said Southern Pine Company had and could convey, in trust for, and for the benefit and use of the said Southern Pine [fol. 23] Company, who is the equitable and beneficial owner thereof.

It was further charged in the petitions that practically all of the stock of the said Southern Pine Company is owned by Eugene Martin, the President, who absolutely controls and dictates the policy and conduct of the said corporation; that F. C. Martin is the son of the said Eugene Martin; that Anna F. C. Martin is the wife of the said Eugene Martin; that D. W. Blake is the brother-in-law, or other near relative of the said Eugene Martin, and that Cecile Dowling is either an employee or clerk of the said corporation, or is otherwise wholly under the control thereof, insofar as the holding of the said lands, the legal title to which was ostensibly placed in her, is concerned. And the said vendees, and each of them, hold the legal title to said lands in trust for, and for the benefit of the said Southern Pine Company, which is the true, real and equitable owner of whatever claim may be set up and urged under the claim of title set up in complainants' bill solely for the purpose of defeating the removal

of this cause into the United States District Court, and for no other purpose, and as trustees for the said Southern Pine Company.

Your complainants aver that thereafter each of the said suits or causes of action was by the said Wyatt Lumber Company, its predecessor in title, by proper order of the Chancery Court of Pearl River County removed to the said United States District Court for the Southern Division of the Southern District of the State of Mississippi, and the record in each case was filed in the said District Court February 27, 1912; and that thereafter the several plaintiffs in the said four suits appeared, and each made motions to remand and to continue [fol. 24] the same, and each of which said motions to continue was by the Court sustained, and the said causes continued, all as appears from the Minutes and Docket Entries of said District Court of the United States, and to which reference is here made; and since the time of said continuance no further step has been taken by the complainants in the said causes, or by either of them. Your complainants would further show that thereafter, and on February 26th, 1918, each of the said suits was dismissed in the said District Court under Equity Rule No. 57, as appears from the Docket Entries in said Court to which reference is likewise here made.

Your complainants would further show unto the Court, that up to the date of the filing of this bill, and since the order of continuance hereinabove referred to, and since the dismissal of the said four suits or causes in the United States District Court, the complainants herein, nor either of them, have taken no steps to prosecute or revive the same, and they have, therefore, in effect and to all intents and purposes, abandoned even any simulated or pretended claim to the said lands, and complainants aver and would show unto the Court that it has now been more than ten years since the filing of the said suits, during all of which time the complainants therein have stood by and permitted this complainant and his predecessors in title to pay the taxes on the said lands, and to be and to remain in the active possession and control thereof; and your complainants aver that on account of the negligence and laches of the defendant herein and his predecessors in title, they should not now be permitted to assert any right, title or interest in or to the said lands, or to interfere with your complainants in their ownership, possession and control thereof; and your complainants would further show unto the Court that it has been more than ten years since the filing of [fol. 25] the four said suits and since even a pretended right to bring an action as to these lands, or any part thereof, has first accrued to the defendant herein, or to some person through whom he claims, and complainants say that the right of the defendant herein or any other person to claim said lands through the said Southern Pine Company, or the said Martin, is now barred by the Statutes of the State of Mississippi.

Your complainants would further show unto the Court that not only is the defendant herein and his predecessors in title precluded by their negligence and laches and by the statutes of the State of Mississippi from now asserting any right, title or interest in and to the said lands, or any part thereof, but she would further show unto the Court that the said lands have for a period of more than

ten years next preceding the filing of this bill been in the open, visible, notorious, exclusive, hostile and continuous adverse possession of this complainant and her predecessors in title, claiming same against the whole world, during all of which period of time complainant and his predecessors in title paid the taxes thereon and made such use and occupation of the said lands as the same were capable of.

Your complainants would respectfully show unto the Court that both they and their immediate and remote grantors bought the said land for a valuable consideration and in good faith, and upon a clean record title from the State of Mississippi on down to this complainant, predicated upon a patent from the State of Mississippi antedating the patent upon which complainants are informed the defendant herein is now asserting title to said land; that he and his said grantors are innocent purchasers for value as to the said land. [fol. 26] Complainants further aver that the patent from the State of Mississippi to the said Pearl River Improvement & Navigation Company, upon which his title is founded, constitutes a contract between the said Pearl River Improvement & Navigation Company and the said State of Mississippi, and upon which his title in and to the said land is founded; and he avers that he is now protected in his title to the said land by Article —, Section — of the Constitution of the United States, which she now specifically pleads.

Complainants are informed and believe, and therefore, charge that the defendant herein although not the real, true and legal owner of said land, and although he has no right or title thereto, is asserting some claim and title, and pretending to have some right and interest in and to the said land, which your complainants aver is wholly pretended claim of title and as such casts a doubt, cloud and suspicion upon the rightful ownership and real title and ownership of your complainant in and to said land, and which said alleged complainants say is calculated to lessen and diminish and does actually lessen and diminish the value of said land to these complainants, and would and does prevent a sale thereof for the actual or real value of said property.

Your complainants would further show unto the Court that they were at the time of the institution of this suit and have been at all times since, and now are, citizens of the State of Illinois, and that the defendant herein is, and has been at all said times, a citizen of the State of Mississippi, as aforesaid; that this — a suit of a civil nature of which this Court has original jurisdiction, and is a suit between citizens of different states; but the matter here in controversy exceeds, exclusive of interest and costs, the sum or value of Three Thousand (\$3,000.00) Dollars.

[fol. 27] Wherefore, premises considered, complainants pray that the said defendants be summoned as required by law to appear before this Honorable Court at the next regular term thereof, to wit, — — —, then and there to plead, answer or demur to the allegations of this bill of complaint, and that he be required to set out in his said answer all the particulars of her said pretended right in and to the said land, and that on a final hearing of this cause complainants pray that this Court will decree the said patent and

the several deeds, instruments or muniments of pretended title relied upon by the defendant herein, may be each and all cancelled and held as naught, and that the defendant shall be perpetually enjoined from setting up or asserting any claim of title or interest in and to the said lands, adverse to the lawful claim and ownership of these complainants, and that these complainants may be decreed to be the sole and only real, true, legal and equitable owners of the said described lands. And complainants further pray that they may have such other and further and general relief as in equity and good conscience they are entitled to have.

And as in duty bound complainants will ever pray.

Davis, Wallace & Georges, T. J. Wills, Attorney for Complainants.

Jurat showing the foregoing was duly sworn to by T. J. Wills omitted in printing.

[fol. 28]

IN UNITED STATES DISTRICT COURT

[Title omitted]

BILL OF COMPLAINT AGAINST H. P. LEWIS

Comes the Edward Hines Yellow Pine Trustees composed of Edward Hines, L. L. Barth and C. C. Wieche, trustees under trust agreement of January 1, 1918, and executing said trust estate under the name of the Edward Hines Yellow Pine Trustees, and exhibit their bill of complaint against H. P. Lewis, whose residence and post office address are unknown to complainants, after diligent search and inquiry, and would respectfully show unto the Court that the complainants are residents and citizens of the State of Illinois, and that the defendant herein is a resident citizen of the State of —, with post office address at —, State of —.

Complainants would further show unto the Court that they are the real, true, legal and equitable owners of the following described lands now situated in the County of Pearl River, formerly Marion [fol. 29] County, State of Mississippi, to wit: S. W. $\frac{1}{4}$ of N. W. $\frac{1}{4}$ of Section 36, Township 2 South, Range 15 West, situated in said county. Complainants would show that the value of said land, the subject of this litigation, and out of which this controversy arises, is in excess of three thousand dollars.

Complainants deraign title to the above described lands as follows:

a. By Act of Congress approved September 28th, 1850, the said lands were donated to the State of Mississippi; thereafter, in accordance with an Act of the Legislature of the State of Mississippi approved on the 8th day of April, 1871, the said lands were patented to the Pearl River Improvement & Navigation Company, under date June 27th, 1871, said patent being found of record in Book G, pp. 418-428, Record of Deeds, Marion County, in which said

lands were then situated, and in Book 4, ppp. 204-205, Record of Deeds, Pearl River County, State of Mississippi, w-ere same are now located.

b. The said Pearl River Improvement and Navigation Company, for a valuable consideration, on November 20th, 1872, conveyed the said lands to M. S. Baldwin, said deed being found of record in Book G, pp. 428-437, Record of Deeds, Marion County, and Book 4, pp. 215-225, Record of Deeds, Pearl River County.

c. That thereafter, and on the 17th day of April, 1873, the said M. S. Baldwin, by his attorney in fact, Samuel Vose, for a valuable consideration conveyed the said lands to Israel Hall by deed of record Book 15, pp. 526, et seq., Record of Deeds, Pearl River County, and also recorded in Book 4, p. 242, said Records.

[fol. 30] d. Deraigning complainants' title further, they show unto the Court that on the 30th day of April, 1889, the said Israel Hall departed this life, leaving a last will and testament which was duly probated in all respects as required by law, the same being found of record in the Record of Wills, County of Marion, State of Mississippi, Book —, pp. —, and in the Record of Wills, Pearl River County, State of Mississippi, Book 1, pp. 35 and 36, by which last will and testament, his wife, Olivia B. Hall, was named as his sole legatee.

e. Thereafter, on July 23, 1900, the said Olivia B. Hall, by quit-claim deed conveyed the said lands to Charlotte H. Eastman, the said deed being in confirmation of a theretofore executed but unrecorded deed from the said Israel Hall to Charlotte H. Eastman, wife of Sidney C. Eastman, said deed being executed about the year 1887, and the deed of confirmation from the said Olivia B. Hall to Charlotte N. Eastman being found of record in Book 12, pp. 222, Record of Deeds, Pearl River County, State of Mississippi.

f. On May 13th, 1904, M. S. Baldwin executed and delivered unto the said Charlotte H. Eastman, a further deed to the said land, ratifying and confirming a previous deed executed by Samuel Vose, as attorney for the said Baldwin, in April, 1873, and found of record in Book G, pp. 477-482, Land Records, Marion County, State of Mississippi. This deed of confirmation being recorded in Book p. 128, Record of Deeds, Pearl River County, State of Mississippi.

g. Thereafter, and on July 5, 1905, for a valuable consideration the said Charlotte H. Eastman and Sidney C. Eastman by warranty [fol. 31] deed conveyed the said lands to the Wyatt Lumber Company, by deed of record, Book 14, pp. 85-87, Record of Deeds, Pearl River County, State of Mississippi.

h. Thereafter, and on January 1, 1918, the said Wyatt Lumber Company conveyed the same to Edward Hines, C. F. Wiehe and L. L. Barth, Trustees of the Edward Hines Yellow Pine Trustees, a Trust Estate, by quit-claim deed found of record in Book 25, pp. 259-261, Record of Deeds, Marion County, State of Mississippi.

Reference to the said above instruments and the records in which the same are recorded are prayed to be taken and considered as exhibits to this bill as if the same were copied herein.

Complainants are informed and believe, that the defendants herein is asserting some right or title in and to the said land by virtue of some claim alleged to have originated in a patent said to have been issued by the State of Mississippi therefor to one Mose Mitchell. That the said patent is claimed to have been issued by the State of Mississippi to the said Mitchell, December 7, 1883; and the said Mitchell is alleged to have conveyed the said land to S. L. Woolridge on December 27, 1883; and the said Woolridge is alleged to have conveyed same to Eugene Martin, January 23, 1885; and the said Martin is alleged to have conveyed same to J. G. Barrett, January 23, 1885; and the said Barrett is alleged to have conveyed same to Hy. Clifton Rodes, July 21, 1888; and the said Rodes is alleged to have conveyed same to the Southern Pine Company, August 5, 1889; and the said Southern Pine Company is alleged to have the said S. W. $\frac{1}{4}$ of N. W. $\frac{1}{4}$ aforesaid to the defendant. [fol. 32] D. W. Blake, said conveyance as of the date of January 26, 1909; and the defendant, D. W. Blake, is alleged to have conveyed same to H. P. Lewis on June 24, 1920, said conveyance being recorded on Book 27, p. 307, Deed Records of Pearl River County, Mississippi.

Complainants would further show unto the Court that the lands involved in this suit are a part of a large body of wild and timbered lands granted by the State of Mississippi under the said Act of April 8, 1871, to the Pearl River Improvement & Navigation Company, and coming to complainants' predecessors in title from the same source and through the same derangement of title concerning which there has been in years past litigation between complainants' predecessors in title and the predecessors in title of the defendant, who have from time to time asserted a pretended title to said lands based upon the alleged patents of the State of Mississippi issued years after the lawful patents through which complainants claim as set out heremabov.

Complainants would further show that the defendant asserts a pretended title coming to him through the Southern Pine Company, a corporation, and Eugene Martin, the source of which is an alleged patent issued by the State of Mississippi, more than twelve years after the lawful and rightful patent through which complainant claims was issued, all as set out hereinabove, and complainant would further show that the said Southern Pine Company was at one time, and is now, as far as the record shows, a corporation under the laws of the State of Mississippi, domiciled in the City of Vicksburg, and the President of the said corporation, and who likewise owned all, or practically all, of the stock therein, was the said Eugene Martin, who was the dominant power and who absolutely controlled the policy [fol. 33] cies and actions of the said corporation, and under whose direction the various assertions and pretense of title hereinabove referred to have been made.

Complainants would further show unto the Court that in the year 1905 in a controversy litigated in the District Court of the United States for the Southern Division of the Southern District of the State of Mississippi, between the said Southern Pine Company and Mrs. Olivia B. Hall, complainants' predecessor in title, and in which the title and claims of said Mrs. Olivia B. Hall, and the pretended title of the Southern Pine Company, were as to lands and titles exactly similar to those under which the land here in controversy are held and claimed, the title of the said Mrs. Hall, complainants' predecessor, was upheld and declared to be legal and valid, the decision of the Circuit Court in this regard being affirmed both by the Circuit Court of Appeals for the Fifth Circuit and by the United States Supreme Court, as reported in 105 Fed. Rep. p. 84, 44 C. C. A. p. 363, and 180 U. S. p. 639. That notwithstanding this, thereafter the said Southern Pine Company continued to assert a claim or title to other lands similar as to title, among them being the four forties here in controversy, which lands, though exactly the same as to source and deraignment of title as to those covered in the litigation hereinabove referred to, had, complainants are advised, through inadvertance or mistake, been left out of the pleadings and decree in that cause, and on the 29th day of September, 1910, the said Southern Pine Company brought suit in the Chancery Court of Pearl River County, Mississippi, against the Wyatt Lumber Company, one of the defendants in title, claiming title to the identical lands here involved, averring that they were the true and lawful owner thereof, and asserting their title from the same source and through the same [fol. 34] chain of title as hereinabove set out.

Complainants would further show that the said suit was by the defendant therein immediately removed into the District Court of the United States for the Southern Division of the Southern District of Mississippi, whereupon the said Southern Pine Company dismissed its said suit and bill without prejudice, and at its own cost, as appears from the Minutes of said Court, and to which reference is here made.

Complainants would further show that thereafter on October 23, 1911, the defendant herein filed a suit as to the above described land against the Wyatt Lumber Company, complainants' predecessor in title, the said suit having been filed in the Chancery Court of Pearl River County, Mississippi, the purpose of the suit being an attack upon the title of the said Wyatt Lumber Company and for the purpose of establishing the title of the defendant herein.

Your complainants would further show that upon the filing in the said Chancery Court of Pearl River County of the last mentioned suit that the defendant therein, the Wyatt Lumber Company, filed its petitions and bonds, all as required and conditioned by law, for the removal of the said suit to the United States District Court for the Southern Division of the Southern District of the State of Mississippi, and in which petitions it was charged that the said Southern Pine Company had been for years and was then resorting to every possible device to avoid and evade the jurisdiction of the Federal Courts, and especially of the District Court of the United States

for the Southern Division of the Southern District of Mississippi, and that, with that end in view, the said Southern Pine Company, seeking to destroy the jurisdiction of the Federal Courts, and the [fol. 35] said District Court of the United States for the Southern Division of the Southern District of Mississippi, attempted fraudulently to pretend to convey its title to these lands, and in doing so to divide the same so that the amount held — particular case, and conveyed to each particular vendee would be so small in value as to be below the jurisdiction of the said United States District Court, and therefore, and in pursuance of the said fraudulent plan and scheme to avoid the jurisdiction of the said United States District Court, did, prior to the institution of the suit and filing of the bill in this case, pretended to convey the said lands away as follows: that is to say, did pretend to convey the N. E. $\frac{1}{4}$ of S. E. $\frac{1}{4}$ of Section 36, T. 2 S. R. 15 West, to Anna F. C. Martin, and did at the same time, and as petitioner is advised and believes on the same date, pretend to convey to F. C. Martin, a portion of said lands, to-wit: S. E. $\frac{1}{4}$ of S. E. $\frac{1}{4}$ of Section 36, T. 2 S. R. 15 West, and did at the same time and as petitioners are advised and believe on the same date pretend and attempt to convey to Cecile Dowling, the S. E. $\frac{1}{4}$ of N. W. $\frac{1}{4}$ of Section 36, T. 2 S. R. 15 West, and did at the same time and as petitioners are advised and believe on the same date, pretend to convey to D. W. Blake, the S. W. $\frac{1}{4}$ of N. W. $\frac{1}{4}$ of said Section 36, T. 2 S. R. 15 West, the sole object of said pretended conveyance being to divide the said land so that the amount and holdings placed in the name of each particular vendee should be worth less than the sum of \$3,000.00 and thereby attempt to defeat the removal of the said controversies into the said District Court of the United States for the Southern Division of the Southern District of Mississippi.

The said petitions further charged that the said pretended conveyances were, and are simulated and pretended conveyances, that [fol. 36] they were not conveyances in fact and were never intended or designed to pass the title claimed by said vendor into the said vendees, the sole object being to place the record title in said vendees, leaving the equitable title and the real control thereof still in the said Southern Pine Company, which corporation has since said pretended conveyance and with the knowledge and consent of said vendees continued to claim and assert title thereto, to attempt to exercise acts of ownership thereover and to sue to confirm its title thereto.

The said petition further charged that none of the said vendees paid anything for the said conveyances, which wholly voluntary, colorable and simulated, and that the said vendees and each of them held the naked legal title to said lands, that is to say, whatever title the said Southern Pine Company had and could convey, in trust for, and for the benefit and use of the said Southern Pine Company, who is the equitable and beneficial owner thereof.

It was further charged in the petitions that practically all of the stock of the said Southern Pine Company is owned by Eugene Martin, the President, who absolutely controls and dictates the policy

and conduct of the said corporation; that F. C. Martin is the son of the said Eugene Martin; that Anna F. C. Martin is the wife of the said Eugene Martin; that D. W. Blake is the brother-in-law, or other near relative of the said Eugene Martin, and that Cecile Dowling is either an employee or clerk of the said corporation, or is otherwise wholly under the control thereof, insofar as the holding of the said lands, the legal title to which was ostensibly placed in her, is concerned. And the said vendees, and each of them, hold the legal title to said lands in trust for, and for the benefit of the said South-[fol. 37] ern Pine Company, which is the true, real and equitable owner of whatever claim may be set up and urged under the claim of title set up in the complainants' bill, solely for the purpose of defeating the removal of this cause into the United States District Court, and for no other purpose, and as a trustee for the said Southern Pine Company.

Your complainants aver that thereafter each of the said suits or causes of action was by the said Wyatt Lumber Company its predecessors in title, by proper order of the Chancery Court of Pearl River County removed to the said United States District Court for the Southern Division of the Southern District of the State of Mississippi, and the record in each case was filed in the said District Court February 27th, 1912; and that thereafter the several plaintiffs in the said four suits approved, and each made motions to remand and to continue the same, and each of which said motions to continue was by the Court sustained, and the said causes continued, all as appears from the Minutes and Docket Entries of the said District Court of the United States, and to which reference is here made; and since the time of said continuance no further step has been taken by the complainants in the said causes, or by either of them. Your complainants would further show that thereafter, and on February 26th, 1918, each of the said suits was dismissed in the said District Court under Equity Rule No. 57, as appears from the Docket Entries in said Court to which reference is likewise here made.

Your complainants would further show unto the Court, that up to the date of the filing of this bill, and since the order of continuance hereinabove referred to, and since the dismissal of the said four [fol. 38] suits or causes in the United States District Court, the complainants therein, nor either of them, have taken no steps to prosecute or revive the same, and they have, therefore, in effect and to all intents and purposes, abandoned even any simulated or pretended claim to the said lands, and complainants aver and would show unto the Court that it has now been more than ten years since the filing of the said suits, during all of which time the complainants therein have stood by and permitted these complainants and their predecessors in title to pay the taxes on the said lands, and to be and to remain in the active possession and control thereof; and your complainants aver that on account of the negligence and laches of the defendant herein and his predecessors in title, they should not now be permitted to assert any right, title or interest in or to the said lands, or to interfere with your complainants in their ownership,

possession and control thereof; and your complainants would further show unto the Court that it has been more than ten years since the filing of the four said suits and since even a pretended right to bring an action as to these lands, or any part thereof; has first accrued to the defendant herein, or to some person through whom he claims, and complainants say that right of the defendant herein or any person to claim said lands through the said Southern Pine Company, or the said Martin, is now barred by the statutes of the State of Mississippi.

Your complainants would further show unto the Court that not only is the defendant herein and their predecessors in title precluded by their negligence and laches and by the statutes of the State of Mississippi from now asserting any right, title or interest in and to the said lands, or any part thereof, but they would further show unto the Court that the said lands have for a period of more [fol. 39] than ten years next preceding the filing of this bill been in the open, visible, notorious, exclusive, hostile and continuous adverse possession of these complainants and their predecessors in title, claiming same against the whole world, during all of which period of time complainants and their predecessors in title, paid the taxes thereon and made such use and occupation of the said lands as the same were capable of.

Your complainants would respectfully show unto the Court that both they and their immediate and remote grantors bought the said land for a valuable consideration and in good faith, and upon a clean record title from the State of Mississippi on down to these complainants, predicated upon a patent from the State of Mississippi antedating the patent upon which complainants are informed that the defendant herein is now asserting title to said land; that he and his said grantors are innocent purchasers for value as to the said land. Complainants further aver that the patent from the State of Mississippi to the said Pearl River Improvement and Navigation Company, upon which their title is founded, constitutes a contract between that said Pearl River Improvement and Navigation Company and the said State of Mississippi, and upon which their title in and to the said land is founded; and they aver that they are now protected in their title to the said land by Article —, Section — of the the Constitution of the United States, which they now specifically plead.

Complainants are informed and believe, and therefore charge that the defendant herein, although not the real, true and legal owner of said land, and although he has no right or title thereto, is asserting some claim and title, and pretending to have some right and interest [fol. 40] in and to the said land, which your complainants aver is wholly a pretended claim of title, and as such casts a doubt, cloud and suspicion upon the rightful ownership and real title and ownership of your complainants in and to said land, and which said alleged title complainants say is calculated to lessen and diminish and does actually lessen and diminish the value of said land to these complainants, and would and does prevent a sale thereof for the actual or real value of said property.

Your complainants would further show unto the Court that they were at the time of the institution of this suit and have been at all

times since, and now are citizens of the State of Illinois, and that the defendant herein is, and has been at all said times a citizen of the State of Mississippi, as aforesaid that this is a suit of a civil nature of which this Court has original jurisdiction, and is a suit between citizens of different states; that the matter here in controversy exceeds, exclusive of interest and costs, the sum or value of Three Thousand (\$3,000.00) Dollars.

Wherefore, premises considered, complainants pray that the said defendant be summoned as required by law to appear before this Honorable Court at the next regular term thereof, to-wit, — — —, there and then to plead, answer or demur to the allegations of this bill of complaint, and that he be required to set out in his answer all the particulars of her said pretended right or title in and to the said lands and that on a final hearing of this cause complainants pray that this Court will decree the said patent and the several deeds, instruments or muniments of pretended title relied upon by the defendant herein, may be each and all cancelled and held as naught, [fol. 41] and that the defendant shall be perpetually enjoined from setting up or asserting any claim of title or interest in and to the said lands, adverse to the lawful claim and ownership of these complainants, and that these complainants may be decreed to be the sole and only real, true, legal and equitable owners of the said described lands. And complainants further pray that they may have such other, further and general relief as in equity and good conscience they are entitled to have.

And as in bound complainants will ever pray.

Davis, Wallace & Georges. T. J. Wills, Attorney for Complainants.

Jurat showing the foregoing was duly sworn to by T. J. Wills omitted in printing.

[fol. 42]

IN UNITED STATES DISTRICT COURT

[Title omitted]

BILL OF COMPLAINT AGAINST GEORGE LAWRENCE

Comes the Edward Hines Yellow Pine Trustees composed of Edward Hines, L. L. Barth and C. F. Wiehe, trustees under agreement of January 1, 1918, and executing said trust estate under the name of the Edward Hines Yellow Pine Trustees, and exhibit their bill of complaint against George Lawrence, a resident citizen of Chicago, Illinois, and would respectfully show unto the Court that the complainants are residents and citizens of the State of Illinois, and that the defendant herein is a resident citizen of the State of Illinois with post office address at Chicago, Illinois.

Complainants would show, further, unto the Court that they are the real, true, legal and equitable owners of the following described lands now situated in the County of Pearl River, formerly Marion

County, State of Mississippi, to-wit: S. E. $\frac{1}{4}$ of N. W. $\frac{1}{4}$ of Section 36, Township 2 South, Range 15 West, situated in said county. Complainants would show that the value of said land, the subject of this litigation, and out of which this controversy arises, is in excess of three thousand dollars.

Complainants deraign title to the above described lands as follows:

a. By Act of Congress approved September 28th, 1850, the said lands were donated to the State of Mississippi; thereafter in accordance with an Act of the Legislature of the State of Mississippi approved on the 8th day of April, 1871, the said lands were patented to the Pearl River Improvement & Navigation Company, under date of June 27th, said patent being found of record in Book G, pp. 418-428, Record of Deeds, Marion County, in which said lands were then situated, and in book 4, pp. 204-205, Record of Deeds, Pearl River County, State of Mississippi, where same are now located.

b. The said Pearl River Improvement and Navigation Company, for a valuable consideration, on November 20th, 1872, conveyed the said lands to M. S. Baldwin, said deed being found of record in Book G, pp. 428-437, Record of Deeds, Marion County, and Book 4, pp. 215-225, Record of Deeds, Pearl River County.

c. That thereafter, and on the 17th day of April, 1873, the said M. S. Baldwin, by his attorney in fact, Samuel Vose, for a valuable consideration conveyed the said lands to Israel Hall, by deed of record Book 15, pp. 526, et sequa, Record of Deeds, Pearl River County, and also recorded in Book 4, p. 242, said Records.

d. Deraigning complainants' title further, they show unto the Court that on the 30th day of April, 1889, the said Israel Hall departed this life, leaving a last will and testament which was duly probated in all respects as required by law, the same being found of record in the Record of Wills, County of Marion, State of Mississippi, Book —, pp. —, and in the Record of Wills, Pearl River County, State of Mississippi, Book 1, pp. 35 and 36, by which said last will and testament his wife, Olivia B. Hall, was named as his sole legatee.

[fol. 44] e. Thereafter on July 23, 1900, the said Olivia B. Hall, by quit-claim deed conveyed the said lands to Charlotte H. Eastman, the said deed being in confirmation of a theretofore executed but unrecorded deed from the said Israel Hall to Charlotte H. Eastman, wife of Sidney C. Eastman, said deed being executed about the year 1887, and the deed of confirmation from the said Olivia B. Hall to Charlotte H. Eastman being found of record in Book 12, p. 222, Record of Deeds, Pearl River County, State of Mississippi.

f. On May 13th, 1904, M. S. Baldwin executed and delivered unto the said Charlotte H. Eastman, a further deed to the said land, ratifying and confirming a previous deed executed by Samuel Vose, as attorney for the said Baldwin, in April 1873, and found of record in Book G, pp. 477-482, Land Records, Marion County, State of

Mississippi. This deed of confirmation being recorded in Book 14, p. 128, Record of Deeds, Pearl River County, State of Mississippi.

g. Thereafter, and on the 5th of July, 1905, for a valuable consideration the said Charlotte H. Eastman and Sidney C. Eastman by warranty deed conveyed the said lands to the Wyatt Lumber Company, by deed of record, Book 14, pp. 85-87 Record of Deeds, Pearl River County, State of Mississippi.

h. Thereafter, and on January 1, 1918, the said Wyatt Lumber Company conveyed the same to Edward Hines, C. F. Wiehe and L. L. Barth, Trustees of the Edward Hines Yellow Pine Trustees, a Trust Estate, by quit-claim deed found of record in Book 25, pp. 259-261, Record of Deeds, Marion County, State of Mississippi.

[fol. 45] Reference to the said above instruments and the records in which the same are recorded are prayed to be taken and considered as exhibits to this bill as if the same were copied herein.

Complainants are informed and believe, that the defendant herein is asserting some right or title in and to the said land by virtue of some claim alleged to have originated in a patent said to have been issued by the State of Mississippi therefor to one Mose Mitchell. That the said patent is claimed to have been issued by the State of Mississippi to the said Mitchell, December 7, 1883; and the said Mitchell is alleged to have conveyed the said land to the said S. L. Woolridge on December 27, 1883; and the said Woolridge is alleged to have conveyed same to J. G. Barrett, January 23, 1885, and the said Barrett is alleged to have conveyed same to Hy. Clifton Rodes, July 21, 1888; and the said Rodes is alleged to have conveyed same to the Southern Pine Company, August 5, 1889; and the said Southern Pine Company is alleged to have conveyed the said S. E. $\frac{1}{4}$ of the N. W. $\frac{1}{4}$, 36-2-15 aforesaid to Cecile Dowling, said conveyance as of the date of — —, — —; and said Cecile Dowling is alleged to have conveyed same to George Lawrence, of Chicago, Illinois, on the — day of — —, 19—, which conveyance is of record in Book 27, p. 335, Deed Records of Pearl River County, Mississippi.

Complainants would further show unto the Court that the lands involved in this suit are a part of a large body of wild and timbered lands granted by the State of Mississippi under the said Act of April 8, 1871, to the Pearl River Improvement & Navigation Company, and coming to Complainants' predecessors in title from the same source and through the same deraignment of title and con- [fol. 46] cerning which there has been in years past litigation between complainants' predecessors in title and the predecessors in title of the defendant, who have from time to time asserted a pretended title to said lands based upon the alleged patents of the State of Mississippi issued years after the lawful patents through which complainants claim, as set out hereinabove.

Complainants would further show that the defendant asserts a pretended title coming to him through the Southern Pine Company, a corporation, and Eugene Martin, the source of which is an alleged patent issued by the State of Mississippi, more than twelve years after the lawful and rightful patents through which complainants

claim was issued, all as set out hereinabove, and complainants would further show that the said Southern Pine Company was at one time, and is now as far as the records show, a corporation under the laws of the State of Mississippi, domiciled in the city of Vicksburg, and that the President of the said corporation, and who likewise owned all, or practically all, of the stock therein, was the said Eugene Martin, who was the dominant power and who absolutely controlled the policies and actions of the said corporation, and under whose direction the various assertions and pretense of title referred to have been made.

Complainants would show unto the Court that in the year 1905 in a controversy litigated in the District Court of the United States for the Southern Division of the Southern District of the State of Mississippi, between the said Southern Pine Company and Mrs. Olivia B. Hall, complainants' predecessor in title, and in which the title and claims of said Mrs. Olivia B. Hall, and the pretended title of the Southern Pine Company were as to lands and title exactly [fol. 47] similar to those under which the lands there in controversy are held and claimed, the title of the said Mrs. Hall, complainants' predecessor in title, was upheld and declared to be legal and valid, the decision of the Circuit Court in this regard being affirmed both by the Circuit Court of Appeals for the Fifth Circuit and by the United States Supreme Court, as reported in 105 Fed. Rep. p. 84, 44 C. C. A. p. 363, and 180 U. S. p. 639. That, notwithstanding this, thereafter the said Southern Pine Company continued to assert a claim or title to other lands similar as to title, among them being the four forties here in controversy, which lands, though exactly the same as to source and deraignment of title as those covered in the litigation hereinabove referred to, had, complainants are advised, through inadvertance or mistake, been left out of the pleadings and decree in that cause, and on the 29th day of September, 1910, the said Southern Pine Company brought suit in the Chancery Court of Pearl River County, Mississippi, against the Wyatt Lumber Company, one of the defendants' predecessors in title claiming title to the identical lands here involved, averring that they were the true and lawful owner thereof, and asserting their title from the same source and through the same chain of title as hereinabove set out.

Complainants would further show that the said suit was by the defendant therein immediately removed into the District Court of the United States for the Southern Division of the Southern District of Mississippi, whereupon the said Southern Pine Company dismissed its said suit and bill without prejudice, and at its own cost, as appears from the Minutes of said Court, and to which reference is here made. [fol. 48] Complainants would further show that thereafter on October 23, 1911, the defendants herein filed a suit as to the above described lands against the Wyatt Lumber Company, complainants' predecessor in title, the said suit having been filed in the Chancery Court of Pearl River County, Mississippi, the purpose of the suit being an attack upon the title of the said Wyatt Lumber Company

and for the purpose of establishing the title of the defendant herein.

Your complainants would further show that upon the filing in the said Chancery Court of Pearl River County of the last mentioned suit that the defendant therein, the Wyatt Lumber Company, filed its petitions and bonds, all as required and conditioned by law, for the removal of the said suit, to the United States District Court for the Southern Division of the Southern District of the State of Mississippi, and in which petitions it was charged that the said Southern Pine Company had been for years and was then resorting to every possible device to avoid and evade the jurisdiction of the Federal Courts, and especially of the District Court of the United States for the Southern Division of the Southern District of Mississippi, and that, with that end in view the said Southern Pine Company, seeking to destroy the jurisdiction of the Federal Courts, and of the said District Court of the United States for the Southern Division of the Southern District of Mississippi, attempted fraudulently to pretend to convey its title to these lands, and in doing so to divide the same so that the amount held in each particular case, and conveyed to each particular vendee would be so small in value as to be below the jurisdiction of the said United States District Court, and therefore, and in pursuance of the said fraudulent plan and scheme to avoid the jurisdiction of the said United States District Court, did, [fol. 49] prior to the institution of the said suit and the filing of the bill in this case; pretend to convey the said lands away as follows: that is to say, did pretend to convey the N. E. $\frac{1}{4}$ of S. E. $\frac{1}{4}$ of section 36, T. 2 S. R. 15 West to Anna F. C. Martin, and did at the same time, and as petitioner is advised and believes on the same date, pretend to convey to F. C. Martin, a portion of said lands to-wit: S. E. $\frac{1}{4}$ of S. E. $\frac{1}{4}$, Sec. 36, T. 2 S. R. 15 West, and did at the same time and as petitioners are advised and believe on the same date, pretend and attempt to convey to Cecile Dowling, the S. E. $\frac{1}{4}$ of N. W. $\frac{1}{4}$ of Sec. T. 2 S. R. 15 West, and did at the same time and as petitioners are advised and believe on the same date, pretend to convey to D. W. Blake the S. W. $\frac{1}{4}$ of the N. W. $\frac{1}{4}$ of said Section 36, T. 2 S. R. 15 West, the sole object of said pretended conveyances being to divide the said land so that the amount and holdings placed in the name of each particular vendee should be worth less than the sum of \$3,000.00, and thereby attempt to defeat the removal of the said controversies into the said District Court of the United States for the Southern Division of the Southern District of Mississippi.

The said petitions further charged that the said pretended conveyances were, and are simulated and pretended conveyances, that they were not conveyances, in fact and were never intended or designed to pass the title claimed by said vendor into the said vendees, the sole object being to place the record title in said vendees, leaving the equitable title and the real control thereof still in the said Southern Pine Company, which corporation has since said pretended conveyances and with the knowledge and consent of said vendees continued to claim and asset title thereto, to attempt to exercise acts of ownership thereover and sue to confirm its title thereto.

[fol. 50] The said petitions further charged that none of the said

vendees paid anything for the said conveyances, which were wholly voluntary, colorable and simulated, and that the said vendees and each of them held the naked legal title to said lands, that is to say whatever title the said Southern Pine Company had and could convey, in trust for, and for the benefit and use of the said Southern Pine Company, who is the equitable and beneficial owner thereof.

It was further — in the petitions that practically all of the stock of the said Southern Pine Company is owned by Eugene Martin, the President, who absolutely controls and dictates the policy and conduct of the said corporation; that F. C. Martin is the son of the said Eugene Martin; that Anna F. C. Martin is the wife of the said Eugene Martin; that D. W. Blake is the brother-in-law, or other near relative of the said Eugene Martin, and that Cecile Dowling is either an employee or clerk of the said corporation, or is otherwise wholly under the control thereof, insofar as the holding of the said lands, the legal title to which was ostensibly placed in her, is concerned. And the said vendees, and each vendees, and each of them, hold the legal title to said lands in trust for, and for the benefit of the said Southern Pine Company, which is the true, real and equitable owner of whatever claim may be set up and urged under the claim of title set up in Complainants' bill, solely for the purpose of defeating the removal of this cause into the United States District Court, and for no other purpose and as a trustee for the said Southern Pine Company.

Your complainants aver that thereafter each of the said suits or causes of action was by the said Wyatt Lumber Company, its predecessor in title, by proper order of the Chancery Court of Pearl River [fol. 51] County removed to the said United States District Court for the Southern Division of the Southern District of the State of Mississippi, and the record in each case was filed in the said District Court February 27th, 1912; and that thereafter the several plaintiffs in the said four suits appeared and each made motions to remand and to continue the same, and each of which said motions to continue was by the Court sustained, and the said causes continued, all as appears from the Minutes and Docket Entries of the said District Court of the United States, and to which reference is here made; and since the time of the said continuance no further step has been taken by the complainants in the said causes, or by either of them. Your complainants would further show that thereafter, and on February 26th, 1918, each of the said suits was dismissed in the said District Court under Equity Rule No. 57, as appears from the Docket Entries in said Court to which reference is likewise here made.

Your complainants would further show unto the Court, that up to the date of the filing of this bill, and since the order of continuance hereinabove referred to, and since the dismissal of the said four suits or causes in the United States District Court, the complainants therein, nor either of them, have taken no steps to prosecute or revive the same, and they have, therefore, in effect and to all intents and purposes, abandoned even any simulated or pretended claim to the said lands, and complainants aver and would show unto the Court that it has now been more than ten years since the filing of the said

suits, during all of which time the complainants therein have stood by and permitted these complainants and their predecessors in title to pay the taxes on the said lands, and to be and to remain in the active possession and control thereof; and your complainants aver that on account of the negligence and laches of the defendant herein [fol. 52] and his predecessors in title, they should not now be permitted to assert any right, title or interest in or to the said lands, or to interfere with your complainants, possession and control thereof; and your complainants would further show unto the Court that it has been more than ten years since the filing of the four said suits and since even a pretended right to bring an action as to these lands, or any part thereof, has first accrued to the defendant herein, or to some person through whom he claims, and complainants say that the right of the defendant herein or of any person to claim said lands through the said Southern Pine Company, or the said Martin, is now barred by the Statutes of the State of Mississippi.

Your complainants would further show unto the Court that not only is the defendant herein and their predecessors in title precluded by their negligence and laches and by the Statutes of the State of Mississippi from now asserting any right, title or interest in and to the said lands, or any part thereof, but they would further show unto the Court that the said lands, have for a period of more than ten years next preceeding the filing of this bill been in the open, visible, notorious, exclusive, hostile and continuous adverse possession of these complainants and their predecessors in title, claiming same against the whole world, during all of which period of time complainants and their predecessors in title, paid the taxes thereon and made such use and occupation of the said lands as the same were capable of.

Your complainants would respectfully show unto the Court that both they and their immediate and remote grantors bought the said land for a valuable consideration and in good faith, and upon a clean record title from the State of Mississippi on down to these [fol. 53] complainants, predicated upon a patent from the State of Mississippi antedating the patent upon which complainants are informed that the defendant herein is now asserting title to said land; that he and his said grantors are innocent purchasers for value as to the said land. Complainants further aver that the patent from the State of Mississippi to the said Pearl River Improvement and Navigation Company, upon which title is founded, constitutes a contract between the said Pearl River Improvement and Navigation Company and the said State of Mississippi, and upon which their title in and to the said land is founded; and they aver that they are now protected in their title to the said land by Article —, Section —, of the Constitution of the United States, which they now specifically plead.

Complainants are informed and believe, and therefore, charge that the defendant herein, although not the real, true and legal owner of the said land, and although he has not the right or title thereto, is asserting some claim and title, and pretending to have some right and interest in and to the said land, which your complainants aver

is wholly a pretended claim of title, and as such casts a doubt, cloud and suspicion upon the rightful ownership and real title and ownership of your complainants in and to said land, and which said alleged title complainants say is calculated to lessen and diminish and does actually lessen and diminish the value of said land to these complainants, and would and does prevent a sale thereof for the actual or real value of said property.

Your complainants would further show unto the Court that they were at the time of the institution of this suit and have been at all times since, and now are citizens of the State of Illinois, and that the defendant herein is, and has been at all times a citizen of the [fol. 54] State of Illinois, as aforesaid; that this is a suit of a civil nature of which this Court has original jurisdiction, and is a suit between citizens of the same state brought in another state; that the matter here in controversy exceeds, exclusive of interest and costs, the sum or value of Three Thousand (\$3,000.00) dollars.

Wherefore, premises considered, complainants pray that the said defendant be summoned as required by law to appear before this Honorable Court at the next regular term thereof, to-wit, — —, 1922, there and then to plead, answer or demur to the allegations of this bill of complaint, and that he be required to set out in his answer all the particulars of her said pretended right or title in and to the said land, and that on a final hearing of this cause complainants pray that this Court will decree the said patent and the several deeds, instruments or minutes of pretended title relied upon by the defendant herein, may be each and all cancelled and held as naught, and that the defendant herein shall be perpetually enjoined from setting up or asserting any claim of title or interest in and to the said lands, adverse to the lawful claim and ownership of these complainants, and that these complainants may be decreed to be the sole and only real, true, legal and equitable owners of the said described lands. And complainants further pray that they may have such further and general relief as in equity and good conscience they are entitled to have.

And as in duty bound complainants will ever pray.

Davis, Wallace & Georges, T. J. Wills, Attorney- for Complainants.

[fol. 55] Jurat showing the foregoing was duly sworn to by T. J. Wills omitted in printing.

IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER OF DEFENDANT ANNA F. C. MARTIN

Comes the defendant, Anna F. C. Martin, by her Attorneys, and answering so much and such parts of the bill of complaint filed against her herein as she is advised it is material and necessary for her to make answer to, says:

[fol. 56] She denies that the complainant, Edward Hines Yellow Pine Trustees, are the real true, legal and equitable owners of the land described in the bill of complaint as the N. E. $\frac{1}{4}$ of S. E. $\frac{1}{4}$ of Sec. 36, Tp. 2, S. r. 15 West situated in the County of Pearl River, State of Mississippi, but admits that said land is now situated in that part of Pearl River County which was formerly a part of Marion County, State of Mississippi.

Defendant admits that said lands were donated to the State of Mississippi under and by virtue of an Act of Congress, approved September 28th, 1850, but denies that said lands were patented to the Pearl River Improvement & Navigation Company, in accordance with either an Act of the legislature of the State of Mississippi, approved on the 8th day of April, 1871, or any other Act of the Legislature; denies that a patent was ever issued by the State of Mississippi to the Pearl River Improvement & Navigation Company; denies that Pearl River Improvement & Navigation Company, for a valuable consideration, on November 20th, 1872, conveyed said lands to M. S. Baldwin denies that thereafter, on the 17th day of April, 1873, the said M. S. Baldwin, by his attorney in fact, Samuel Vose, for a valuable consideration conveyed said land to Israel Hall, by deed of record in Book 15, page 256; denies that Olivia B. Hall acquired title to said land by a last will and testament of her husband Israel Hall, and denies that the said Israel Hall left a last will and testament and that the said alleged will and testament was duly probated in all respects as required by law and named the said Olivia B. Hall as his sole legatee; denies that on July the 23, 1900, the said Olivia B. Hall, by quit claim deed, conveyed said land to Charlotte H. Eastman, and denies that said deed was in confirmation of a deed theretofore executed by the said Israel Hall to Charlotte H. Eastman, [fol. 57] wife of Sidney C. Eastman; denies that on May 13, 1904, M. S. Baldwin executed and delivered unto the said Charlotte H. Eastman a further deed to the said land ratifying and confirming a previous deed executed by Samuel Vose as attorney for the said Baldwin in April, 1873; denies that thereafter on the 5th day of July, 1915, for a valuable consideration, the said Charlotte H. Eastman, and Sidney A. Eastman, by warranty deed, conveyed the said lands to the Wyatt Lumber Company; denies that thereafter on January 1st, 1919, said Wyatt Lumber Company conveyed the same to Edward Hines, C. F. Wiehe, and L. L. Barth, trustees of the Edward Hines Yellow Pine Trustees, by quit claim deed or otherwise.

Defendant admits that she is asserting title in and to the said land by virtue of a patent which was issued by the State of Mississippi to Mose Mitchell on December 7th, 1883, and that the title vested in the said Mose Mitchell became, by successive conveyances, which will be more fully and particularly hereinafter set out, vested in this defendant.

Defendant denies that the lands involved in this suit are a part of the body of wild timbered lands granted by the State of Mississippi, under the Act of April 8th, 1871, to the Pearl River Improvement & Navigation Company, and denies that said lands came to complainants' predecessor in title from the same source and through

the same deraignment and concerning which there had been in years past, litigation between complainants' predecessor in title and the predecessor in title of the defendant. Defendant admits, however, that her predecessors in title to said lands have asserted title to said land under the patent from the State of Mississippi issued to Mose Mitchell, in the year 1883, which patent this defendant avers is a [fol. 58] valid patent, and the only valid patent ever issued by the State of Mississippi to said land.

Defendant admits that one of his predecessors in title was the Southern Pine Company, a corporation under the laws of Mississippi, domiciled in Vicksburg, Mississippi, and that Eugene Martin, deceased, was at one time president of the said Corporation. As to the allegations in said bill of complaint contained that said Eugene Martin was the dominant power and absolutely controlled the policies and actions of the said corporation and directed the action of the various predecessors in title of the defendant in conveying said property, this defendant has no information or knowledge concerning such allegations and is unable to admit or deny the same, but for the purpose of this suit, and in order to require strict proof of said allegations, defendant denies each and every said allegations and requires strict proof thereof by the complainant.

Defendant admits that it is true that there was a suit between the Southern Pine Company and Mrs. Olivia B. Hall, with reference to certain lands at that time being claimed by both said parties, but denies that said litigation was in the year 1905, and denies that the title of the land involved in said litigation was exactly similar to the title under which the defendant claims the land here in controversy. And defendant avers that the decision of the Circuit Court of Appeals and the Supreme Court of the United States in that case is **not** in any way controlling upon the Court in this case, for the reason that that case was tried and decided on an agreed statement of facts, in which agreed statement of facts it was expressly agreed that the bond required by the Act of March 27, 1871, was executed and filed by the Pearl River Improvement & Navigation Company, and approved by [fol. 59] the Governor of the State of Mississippi, while the defendant herein denies that said bond, which was a condition precedent to the issuance of the patent to the Pearl River Improvement & Navigation Company was ever executed, filed and approved by the Governor. Defendant further avers that the decision of the Circuit Court of Appeals in that cause is not controlling in this case, for the reason that the lands herein involved are neither on nor near Pearl River, and under the Constitution of the State of Mississippi of 1869, Section 6, Article 8 thereof, construed in the case of *Tynes vs. Southern Pine Co.*, 54 Southern, 885, the Legislature and officers of the State of Mississippi were prohibited from donating to anybody, for any purpose, swamp and overflowed lands granted to the State of Mississippi by an Act of Congress of 1850 not situated on Pearl River. And defendant denies that the lands involved in this suit were left out of the suit of the Southern Pine Company against Mrs. Olivia B. Hall by inadvertence or mistake.

Defendant admits that the Southern Pine Company, on the 29th day of September, 1910, filed in the Chancery Court of Pearl River County, Mississippi, against Wyatt Lumber Company, one of the alleged predecessors in title of complainants, in which suit Southern Pine Company dereigned its title to said land and prayed for a cancellation of the claim of title not then but now being asserted by complainants; and the defendant admits that said suit was removed to this Court and by this Court dismissed without prejudice. Defendant admits that on October 23, 1911, she filed a suit against the Wyatt Lumber Company, in the Chancery Court of Pearl River County, against the Wyatt Lumber Company, in which suit the said Anna F. C. Martin sought to remove the claim of title of the said [fol. 60] Wyatt Lumber Company as a cloud upon his title, and said suit, upon petition of the Wyatt Lumber Company, was removed to this Honorable Court. And in the petition for removal, various and sundry imaginary charges were made by the Wyatt Lumber Company of the effect that conveyances had been executed by the Southern Pine Company to prevent this Court from assuming jurisdiction of said cause of action, said charges in said petition of Wyatt Lumber Company being practically the same as the complainants have alleged them to be, but as the said Anna F. C. Martin denied these charges, and took issue thereon, and said suit was dismissed on February 28th, 1918, by this Court under Equity Rule No. 57, without said cause ever being tried on any of the issues there involved, and without the Court determining whether or not the imaginary allegations made by the Wyatt Lumber Company in its said petition were true, defendant now avers that what was alleged in that cause can have no bearing in this case, and is wholly superfluous and redundant matter; but if by setting out the allegations contained in the said suit by Anna F. C. Martin against the said Wyatt Lumber Company in 1911, which cause now stands dismissed under Equity Rule No. 57 of this Court, it is the intention and purpose of the complainant to re-aver the truth of the allegations in said petition contained, then this defendant denies each and every of said allegations in said petition contained, and defendant, denies that the land described in the bill of complaint was conveyed by the Southern Pine Company to Anna F. C. Martin for the purpose of preventing this Court from assuming jurisdiction in said cause; defendant further denies that the object of said conveyance from the Southern Pine Company to Anna F. C. Martin was for the purpose of dividing the said land so that the value of the land held by each [fol. 61] particular vendee would be less than the sum of \$3,000.00 and thereby defeat the removal of said controversies to this Court.

Defendant denies that said conveyances were simulated and pretended conveyances and that they were not in fact conveyances and were never intended to pass the title claimed by the said Southern Pine Company, predecessor in title, to this defendant, and denies that the equitable title to said land was left in the Southern Pine Company, and that said corporation has since said conveyances with the knowledge and consent of said vendees, continued to claim and assert title thereto, but on the contrary, defendant avers that the Southern

Pine Company has not owned or claimed to own the said land since the execution of its deed conveying said land to Anna F. C. Martin. Defendant denies that there was no consideration for *me* conveyance of said land by the Southern Pine Company to the said Anna F. C. Martin, and denies that said conveyance was wholly voluntarily and simulated and that said vendees and each of them, held only the legal title to said land. Defendant further denies each and every allegation of complainants that the defendant Anna F. C. Martin held the legal title to said land in trust for the benefit of the Southern Pine Company, and that said conveyance was made for the sole purpose of defeating the removal of said cause to the United States District Court. Defendant denies that she and her predecessors in title have abandoned all claim to said land, but avers that they have been claiming the title to said land at all times before and since the dismissal of the suit filed by the Southern Pine Company against the Wyatt Lumber Company, as will appear from the records of Pearl River County, Mississippi, and the dereignment of the title of defendant hereinafter set forth.

[fol. 62] Defendant admits that it has been more than ten years since the filing of said suits, but denies that she and her predecessors in title have permitted complainants and their predecessors in title to pay taxes on said land; denies that complainants and their predecessors in title have paid the taxes on said land; denies that she or her predecessors in title have permitted complainants to be and remain in the active possession and control thereof, but on the contrary defendant avers that she and her predecessors in title have paid the taxes on said land, except when complainants rushed in ahead of her and her predecessors in title and paid the taxes thereon. And defendant further avers that there has never been any actual possession and control of said land of any kind, by either the complainants and their predecessors in title, or by defendant and her predecessors in title.

Defendant denies that the failure of Anna F. C. Martin to prosecute her said cause of action against the Wyatt Lumber Company, and permitting the same to be dismissed under Equity Rule No. 57 of this Court, constitutes such negligence and laches as to bar this defendant and her predecessors in title from asserting their title by way of defense or otherwise against the pretended and simulated claim of title of complainants, and denies that she or her predecessors in title should be restrained from making defense to the bill of complaint filed herein by complainants; and defendant denies that it has been more than ten years since the right to bring an action as to these lands or any thereof, has first accrued to the defendant and here predecessors in title or some persons through whom she claims and denies that the right of the defendant herein to claim said lands through the Southern Pine Company, or the said Martins, is now barred by the statutes of limitations of the State of Mississippi. On the contrary defendant avers that the complainants have [fol. 63] never owned or had a valid title on which to base a claim of title to said land, and whatever title that they or their predeces-

sors in title have claimed to have amounts to no more than color of title and since complainants have never gone to the actual possession and control of said land, the statutes of limitations of the State of Mississippi have never been put into operation in favor of complainants and against defendant, and her predecessors in title. The defendant and her predecessors in title are, therefore, not barred by the statutes of limitations of the State of Mississippi from showing by way of defense to the suit instituted by the complainants against her that complainants are not the owners of said land and that he is the real owner thereof.

Defendant again denies that she or her predecessors in title are precluded from asserting title to said land by way of defense in this suit or otherwise, because said cause of action of Anna F. C. Marlin against Southern Pine Company was dismissed by this Court under Equity Rule No. 57 for want of prosecution; and this defendant especially denies that the said land has for a period of more than ten years next preceding the filing of this bill, been in the open, visible, notorious, exclusive, hostile and continuous adverse possession of complainants and their predecessors in title; denies that the said complainants and their predecessors in title have been claiming said lands against the world and denies that during all of said period of time, complainants and their predecessors in title have paid taxes thereon and made such use and occupation of the said lands as the same were capable of.

Defendant denies that complainants and their immediate and remote grantors bought said land for a valuable consideration and in [fol. 64] good faith; denies that they have a clear title from the State of Mississippi predicated upon a patent antedating the patent upon which the defendant is asserting title to said land. Defendant denies that the alleged patent from the State of Mississippi to the Pearl River Improvement & Navigation Company, upon which the title to complainants is founded, constitutes a contract between the Pearl River Improvement & Navigation Company, and the State of Mississippi and that said complainants are protected in their title to said land by Article —, Section —, of the Constitution of the United States. On the *controversy*, defendant avers that said pretended patent was without consideration, and an attempted donation in violation — Section 6, Article 8 of the Constitution of the State of Mississippi of 1869. Defendant admits that she is asserting title to and claiming to own said land, but denies that it is a pretended claim of title, and denies that it casts a doubt, cloud or suspicion on complainants' claim of title, on the contrary defendant avers that her title is the true, legal and equitable title to said lands and that the claim of title of complainants to said land casts a cloud, doubt and suspicion on her title. Defendant denies that this is a suit of civil nature of which this Court has original jurisdiction, and denies that the land in controversy exceeds, exclusive of interest and cost the sum or value of \$3,000.00.

Defendant avers that the true, legal and equitable title to said land is vested in her and defendant dereigns the title under which she claims to be the true owner of said land, as follows:

(1) By an Act of Congress approved September 28th, 1850, said land was granted by the United States to the State of Mississippi and [fol. 65] thereafter said land was patented to the State of Mississippi by the United States, pursuant to the provisions of said Act of Congress.

(2) The State of Mississippi, in consideration of the sum of \$—, sold said land to Moses Mitchell, and on December 7th, 1883, issued its patent therefor to the said Moses Mitchell, which patent is of record in the land Deed Records of Pearl River County, Mississippi, Book 5, page 166.

(3) The said Moses Mitchell, for a valuable consideration, on December 27th, conveyed said land to S. L. Woolridge by a deed bearing that date and of record in Book 5 page 204 of the Land Deed Records of Pearl River County, Mississippi.

(4) That said S. L. Woolridge, for a valuable consideration on January 23, 1885, sold and conveyed said land to Eugene Martin, by a deed bearing that date of record in Land Book 5, page 219 of the Land Deed Record of Pearl River County, Mississippi.

(5) That the said Eugene Martin, for a valuable consideration on January 23rd, 1885, sold and conveyed said land to J. G. Barrett by a deed bearing that date, and of record in Land Book 5, page 223 of the Land Deed Records of Pearl River County, Mississippi.

(6) That the said J. G. Barrett, for a valuable consideration, on July 21st, 1888, sold and conveyed said lands to Henry Clifton Rodes by a deed bearing that date and of record in Book 6, page 5 of the Land Records of Pearl River County, Mississippi.

[fol. 66] (7) That the said Henry Clifton Rodes, for a valuable consideration, on August 6th, 1889, sold and conveyed said land to the Southern Pine Company by a deed bearing that date and of record in Book 6, page 42 of the Land Deed Records of Pearl River County, Mississippi.

(8) That the Southern Pine Company, for a valuable consideration, on the 26th day of January, 1919, sold and conveyed said land to Anna F. C. Martin, by a deed bearing that date and of record in the Pearl River County, Mississippi, Book 15, page 286.

Defendant further avers that by Section 6, Article 8 of the Constitution of the State of Mississippi of 1869, a common school fund was established to consist of the proceeds of the sale of all swamp and overflowed lands granted to the State under Act of Congress approved September 28, 1850, "except the swamp lands lying and situated on Pearl River, in the Counties of Hancock, Marion, Lawrence, Simpson and Copiah:" and that at the time of the enactment of said Act of March 27th, 1871, attempting to grant, and authorize the issuance of a patent to the land described in the bill of complaint to the Pearl River Improvement & Navigation Company, the predecessor in title of complainants, and at the time of the issuance

of the said pretended patent to the said Pearl River Improvement & Navigation Company, under said Act of March 27, 1871, the said Section 6, Article 8 of the Constitution of the State of Mississippi was in full force and effect and the Act of the Secretary of State and Governor in attempting to issue a patent to the said Pearl River Improvement & Navigation Company, conveying said land described [fol. 67] in the bill of complaint, was in plain violation of said Section 6, Article 8 of the Constitution of the State of Mississippi of 1869, and were utterly void and vested no title whatever in the said Pearl River Improvement & Navigation Company, the predecessors in title of complainants, for the reason as defendant avers, that said land is neither on nor near Pearl River, but is remotely situated from Pearl River and is more than eighteen miles East of Pearl River and lies East of the range of hills that divides the watershed of Pearl River from that of Wolf River, and actually lies East of Wolf River, and upon a tributary of Wolf River running into Wolf River from the East. Defendant further avers that said drains into Wolf River and many miles of space of territory intervenes between the Western edge of the above described lands and the most Eastern edge of any of the swamp and overflowed lands donated to the State, under Act of Congress of September 28th, 1850, that lie either on Pearl River or within the watershed of Pearl River; so that said lands neither lie in the valley of Pearl River nor are they contiguous to any swamp and overflowed lands granted to the State by said Act of Congress, which do lie in the valley or watershed of Pearl River. And so it is, defendant avers, that the lands described in the bill of complaint was never conveyed to the Pearl River Improvement & Navigation Company, by said patent alleged by complainants to have been issued to the said Pearl River Improvement & Navigation Company, under the Act of March 27th, 1871, and the said pretended patent to the Pearl River Improvement & Navigation Company is illegal and void for the reason that said attempted conveyances to the Pearl River Improvement & Navigation Company, by the officers of the State of Mississippi, under Act of March 27, [fol. 68] 1871, was in violation of Section 6, Article 8 of the Constitution of the State of Mississippi of 1869.

Defendant further avers that the Supreme Court of the State of Mississippi, in the case of *Tynes vs. Southern Pine Company*, reported in 54 southern — page 885, in construing a patent to swamp and overflowed lands not located on Pearl River, and issued to the Pearl River Improvement & Navigation Company, under said Act of March 27, 1871, creating the Pearl River Improvement & Navigation Company, held that said patent was void and conveyed no title to the said Pearl River Improvement & Navigation Company for the reason that said land attempted to be conveyed by said patent was not on Pearl River and the Legislature of the State of Mississippi was prohibited by Section 6, Article 8 of the Constitution of the State of Mississippi of 1869, (or 1868) from donating to anybody for any purpose swamp and overflowed lands not situated on Pearl River; that the Supreme Court of the State of Mississippi, in

the case of *Hardy vs. Hartman*, reported in Volume 4, Southern Reporter, page 545, and also in (73 Southern Reporter, page 798) the case of *Becker vs. Bank of Columbia* held that all patents issued to the Pearl River Improvement & Navigation Company under said Act of March 27, 1871, are void for the reason that said company did not comply with the condition precedent in said act that it should execute and file the bond therein provided. The Supreme Court of the State of Mississippi, in the case of *Becker vs. Bank of Columbia*, supra, further held that the decision in the case of *Hardy vs. Hartman*, supra, had become a rule of property in the State of Mississippi, and that all parties acquiring property in the State of Mississippi had a right to rely on the law as declared by the decision of the Court of last resort of the State of Mississippi.

[fol. 69] Defendant further avers that said Act of 1871, by which said company was created, did not divest the State of title to said land; but, on the contrary, it expressly provided that before patents to said land could be issued by the State to said Company that a bond in the sum of \$50,000.00 would be executed by said company, filed in the office of the Secretary of State and approved by the Governor, and the execution, filing and approval of said bond was made by the act a condition precedent to the patents being issued to said Company. And since the complainants neither allege nor claim that said bond was executed, filed and approved as required by said act, the patent under which they claim to own said land is absolutely and utterly void.

Defendant further avers that if this Court should hold that the land here involved is on Pearl River within the meaning of the Act of March 27th, 1871, creating the Pearl River Improvement & Navigation Company, then said lands were granted to the Board of Commissioners of the Southern District of Pearl River, by an Act of the Legislature of the State of Mississippi of March 12, 1852, which act expressly granted to the Board of Commissioners of the Southern District of Pearl River, all of swamp and overflowed lands, lying and situated on Pearl River, in the counties of Hancock, Marion, Lawrence, Copiah and Simpson, and included in the grant of such lands made by Act of Congress of September 28, 1850, to the State of Mississippi. Defendant further avers that said counties named in said act appointed the Commissioners therein provided for and said Commissioners appointed a Treasurer as by said act provided. Defendant further avers that said land was at the time of the enactment of March 12, 1852, located in Marion County, but said land is now located in Pearl River County.

[fol. 70] So defendant avers that if said land could be held to be land lying and situated on Pearl River, then the title to said land by virtue of the Act of March 12, 1852, passed to the Board of commissioners of the Southern District of Pearl River for the benefit of the counties therein named, and said counties had a vested right in said land at the time the legislature by said Act of March 27, 1871, attempted to grant the same to the Pearl River Improvement & Navigation Company, and there was no authority in the Legislature of the

State of Mississippi to grant said land by the Act of March 27, 1871, to the Pearl River Improvement & Navigation Company and no right in the Legislature of the State of Mississippi to impair the right of said counties to said land which became vested in said counties by the Act of March 12, 1852. And so it is defendant avers that if said lands are held to be lands on Pearl River, then the patent to the Pearl River Improvement & Navigation Company, under which complainants claim to own said land, is void for the reason that said title to said land was not in the State of Mississippi on March 27, 1871, and there was no authority in the Legislature to grant to the Pearl River Improvement & Navigation Company or any one else.

Defendant further avers that the complainants and their predecessors in title have known for more than forty years that the title under which they claim is utterly and absolutely void and that they have no title to said land, and during all of said years they have made no assertions of their claim of title in any way. And they well know that they could not secure a decree in any Court of the State of Mississippi upholding the validity of their claim or title, and cancelling the title of defendant. Yet in defiance of the [fol. 71] repeated decisions of the Supreme Court of the State of Mississippi that all titles of the kind under which they claim to own said land are utterly and totally void, they are now attempting to assert said invalid title in this Court. And defendant avers that they filed said suit in this Court in an effort to avoid the effect of the decisions of the Supreme Court of the State of Mississippi, and in the hope that this Court would refuse to follow the decisions of the Supreme Court of the State of Mississippi, which Court, above all others, has the right to construe the statutes of its own state.

Defendant further avers that the matter, or land, in controversy, exclusive of interest and costs, does not exceed the sum of \$3,000.00, but the value of said land is much less than \$3,000.00, and this Court should refuse to take jurisdiction of this cause.

And now having fully answered all of the allegations of the bill of complaint filed herein against her, or so much and such parts thereof as she is advised that it is material or necessary for her to make answer to, defendant prays that she may be dismissed with her reasonable costs, etc.

Anna F. C. Martin, Defendant. Hathorn & Williams,
Solicitors for Defendant.

Jurat showing the foregoing was duly sworn to by E. B. Williams omitted in printing.

[fol. 72]

IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER OF FRANCIS C. MARTIN

Comes the defendant, Francis Co. Martin, by his attorneys and answering so much and such parts of the bill of complaint filed against him herein as he is advised it is material and necessary for him to make answer to, says:

He denies that the complainant-, Edward Hines Yellow Pine Trustees, are the real, true, legal and equitable owners of the land described in the bill of complaint as the S. E. $\frac{1}{4}$ of the S. E. $\frac{1}{4}$ of Sec. 36, Tp. 2 S. R. 15 West situated in the County of Pearl River, State of Mississippi, but admits that said land is now situated in that part of Pearl River County which was formerly a part of Marion County, State of Mississippi.

Defendant admits that said lands were donated to the State of Mississippi under and by virtue of an Act of Congress, approved [fol. 73] September 28th, 1850, but denies that said lands were patented to the Pearl River Improvement & Navigation Company, in accordance with either an Act of the Legislature of the State of Mississippi, approved on the 8th day of April, 1871, or any other Act of the Legislature; denies that a patent was ever issued by the State of Mississippi, to the Pearl River Improvement & Navigation Company; denies that Pearl River Improvement Company, for a valuable consideration, on November 20th, 1872, conveyed said lands to M. S. Baldwin; denies that thereafter on the 17th day of April 1873, to the said M. S. Baldwin, by his attorney in fact, Samuel Vose, for a valuable consideration conveyed said land to Israel Hall, by deed of record in Book 15, page 256; denies that Olivia B. Hall acquired title to said land by a last will and testament of her husband, Israel Hall, and denies that the said Israel Hall left a last will and testament and that said alleged will and testament was duly probated in all respects as required by law and named the said Olivia B. Hall as his sole legatee; denies that on July 23, 1900, the said Olivia B. Hall, by quit claim deed, conveyed said land to Charlotte R. Eastman, and denies that said deed was in confirmation of a deed theretofore executed by the said Israel Hall to Charlotte H. Eastman, wife of Sidney C. Eastman; denies that on May 13, 1904, M. S. Baldwin executed and delivered unto the said Charlotte H. Eastman a further deed to the said land ratifying and confirming a previous deed executed by Samuel Vose as attorney for the said Baldwin in April, 1873; denies that thereafter on the 5th day of July, 1915, for a valuable consideration, the said Charlotte H. Eastman, and Sidney C. Eastman, by warranty deed, conveyed the said lands to the Wyatt Lumber Company; denies that thereafter [fol. 74] on January 1st, 1919, said Wyatt Lumber Company conveyed the same to the Edward Hines, C. F. Eiche, and L. L. Barth, trustees of the Edward Hines Yellow Pine Trustees, by quit claim deed or otherwise.

Defendant admits that he is asserting title in and to the said land by virtue of a patent which was issued by the State of Mississippi to Mose Mitchell on December 7th, 1883, and that the title vested in the said Mose Mitchell became, by successive conveyances, which will be more fully and particularly hereinafter set out, vested in this defendant.

Defendant denies that lands involved in this suit are a part of the body of wild timbered lands granted by the State of Mississippi, under the Act of April 8th, 1871, to the Pearl River Improvement & Navigation Company, and denies that said lands came to complainants' predecessor in title from the same source and through the same dereliction and concerning which there has been in years past, litigation between complainants' predecessor in title and the predecessor in title of the defendant. Defendant admits, however, that his predecessors in title to said lands have asserted title to said land under the patent from the State of Mississippi issued to Mose Mitchell, in the year 1883, which patent this defendant avers is a valid patent, and the only valid patent ever issued by the State of Mississippi to said land.

Defendant admits that one of his predecessors in title was the Southern Pine Company, a corporation under the laws of Mississippi, domiciled in Vicksburg, Mississippi, and that Eugene Martin, deceased, was at one time president of the said Corporation. As to the allegations in said bill of complaint contained that said Eugene Martin was the dominant power and absolutely controlled the policy [fol. 75] and actions of the said corporation and directed the action of the various predecessors in title of the defendant in conveying said property, this defendant has no information or knowledge concerning such allegations and is unable to admit or deny the same but for the purpose of this suit, and in order to require strict proof of said allegations, defendant denies each and every of said allegations and requires strict proof thereof by the complainant.

Defendant admits that it is true that there was a suit between the Southern Pine Company and Mrs. Olivia B. Hall, with reference to certain lands at that time being claimed by both said parties, but denies that said litigation was in the year 1905, and denies that the title of the land involved in said litigation was exactly similar to the title under which the defendant claims the land here in controversy. And defendant avers that the decision of the Circuit Court of Appeals and the Supreme Court of the United States in that case is not in any way controlling upon the Court in this case, for the reason that the case was tried and decided on an agreed statement of facts, in which agreed statement of facts it was expressly agreed that the bond required by the Act of March 27, 1871, was executed and filed by the Pearl River Improvement & Navigation Company and approved by the Governor of the State of Mississippi, while the defendant herein denies that said bond, which was a condition precedent to the issuance of the patent to the Pearl River Improvement & Navigation Company was ever executed, filed and approved by the Governor. Defendant further avers that the decision of the Circuit Court of Appeals in that cause is not controlling in this case,

for the reason that the lands here involved are neither on nor near Pear River, and under the Constitution of the State of Mississippi of [fol. 76] 1869, Article 8 thereof, construed in the case of *Tynes vs. Southern Pine Co.*, 54, Southern, 885, the Legislature and officers of the State of Mississippi were prohibited from donating to anybody, for any purpose, swamp and overflowed lands granted to the State of Mississippi by an Act of Congress of 1850 not situated on Pearl River. And defendant denies that the lands involved in this suit were left out of the suit of the Southern Pine Company against Mrs. Olivia B. Hall by inadvertence or mistake.

Defendant admits that the Southern Pine Company on the 29th day of September, 1910, — suit in the Chancery Court of Pearl River County, Mississippi, against Wyatt Lumber Company, one of the alleged predecessors in title of complainants, in which suit Southern Pine Company dereigned its title to said land and prayed for a cancellation of the claim of title not then but now being asserted by complainants; and defendant admits that said suit was removed to this Court and by this Court dismissed without prejudice. Defendant admits that on October 23, 1911, he filed a suit in the Chancery Court of Pearl River County, against the Wyatt Lumber Company, in which suit, the said Francis C. Martin sought to remove the claim of title of the said Wyatt Lumber Company as a cloud upon his title, and said suit, upon petition of the Wyatt Lumber Company was removed to this Honorable Court. And in the petition for removal, various and sundry imaginary charges were made by the Wyatt Lumber Company to the effect that conveyances had been executed by the Southern Pine Company to prevent this Court from assuming jurisdiction of said cause of action, said charges in said petition of Wyatt Lumber Company being practically the same as the complainants have alleged them to be, but as the said Francis C. Martin [fol. 77] denied these charges, and took issue thereon, and said suit was dismissed on February 28th, 1918, by this Court under Equity Rule No. 57, without said cause ever being tried on any of the issues there involved, and without the Court determining whether or not the imaginary allegations made by the Wyatt Lumber Company in its said petition were true, defendant now avers that what was alleged in that cause can have no bearing in this case, and is wholly superfluous and redundant matter; but if by setting out the allegations contained in the said suit by Francis C. Martin against the said Wyatt Lumber Company in 1911, which cause now stands dismissed under Equity Rule No. 57 of this Court, it is the intention and purpose of the complainant to re-aver the truth of the allegations in said petitions contained, then this defendant denies each and every of said allegations in said petition contained, and defendant denies that the land described in the bill of complaint was conveyed by the Southern Pine Company to Francis C. Martin, for purpose of preventing this Court from assuming jurisdiction in said cause; defendant further denies that the sole object of said conveyance from the Southern Pine Company to Francis C. Martin was for the purpose of dividing the said land so that the value of the land held by

each particular vendee would be less than the sum of \$3,000.00 and thereby defeat the removal of said controversies to this Court.

Defendant denies that said conveyances were simulated and pretended conveyances and that they were not in fact conveyances and were never intended to pass the title claimed by the said Southern Pine Company, predecessor in title, to this defendant, and denies that the equitable title to said land was left in the Southern Pine Company, and that said corporation has since said conveyance, with [fol. 78] the knowledge and consent of said vendees, continued to claim and assert title thereto, but on the contrary defendant avers that the Southern Pine Company has not owned or claimed to own the said land since the execution of its deed conveying said land to Francis C. Martin. Defendant denies that there was no consideration for the conveyance of said land by the Southern Pine Company to the said Francis C. Martin, and denies that said conveyance was wholly voluntary and simulated and that said vendees and each of them, held only the legal title to said land. Defendant further denies each and every allegation of complainants that the defendant, Francis C. Martin, held the legal title to said land in trust for the benefit of the Southern Pine Company, and that said conveyance was made for the sole purpose of defeating the removal of said cause to the United States Court. Defendant denies that he and predecessors in title have abandoned all claim to said land, but avers that they have been claiming the title to said land at all times before and since the dismissal of the suit filed by the Southern Pine Company against Wyatt Lumber Company, as will appear from the records of Pearl River County, Mississippi, and the dereignment of the title of defendant hereinafter set forth.

Defendant admits that it has been more than ten years since the filing of said suits, but denies that he and his predecessors in title have permitted complainants and their predecessors in title to pay taxes on said land; denies that complainants and their predecessors in title have paid the taxes on said land; denies that he or his predecessors in title have permitted complainants to be and remain in the active possession and control thereof, but on the contrary, defendant avers that he and his predecessors in title have paid the taxes on said [fol. 79] land, except when complainants rushed in ahead of him and his predecessors in title and paid the taxes thereon. And defendant further avers that there has never been any actual possession and control of said land of any kind, by either the complainants and their predecessors in title, or defendant and his predecessors in title. Defendant denies that the failure of Francis C. Martin to prosecute his said cause of action against the Wyatt Lumber Company, and permitting the same to be dismissed under Equity Rule No. 57 of this Court, constitutes such negligence and laches as to bar this defendant and his predecessors in title from asserting their title by way of defense or otherwise against the pretended and simulated claim of title of complainants, and denies that he or his predecessors in title should be restrained from making defense to the bill of complaint filed herein by complainants; and defendant denies that it has been more than ten years since the right to bring

an action as to these lands or any part thereof, has first accrued to the defendant and his predecessors in title or some persons through whom he claims and denies that the right of the defendant herein to claim said lands through the Southern Pine Company, or the said Martin, is now barred by the statutes of limitations of the State of Mississippi. On the contrary defendant avers that the complainants have never owned or had a valid title on which to base a claim of title to said land, and whatever title they or their predecessors in title have claimed to have amounts to no more than color of title and since complainants have never gone into the actual possession and control of said land, the statutes of limitations of the State of Mississippi have never been put into operation of complainants and against defendant, and his predecessors in title. The defendant and [fol. 80] his predecessors in title are, therefore, not barred by the statutes of limitations of the State of Mississippi from showing by way of defense to the suit instituted by the complainants against him, that complainants are not the owners of said land and that he is the real owner thereof.

Defendant again denies that he or his predecessors in title are precluded from asserting title to said land by way of defense in this suit or otherwise, because said cause of action of Francis C. Martin against Southern Pine Company was dismissed by this Court under Equity Rule No. 57, for want of prosecution; and this defendant especially denies that the said land has for a period of more than ten years next preceding the filing of this bill, been in the open, visible, notorious, exclusive, hostile and continuous adverse possession of complainants and their predecessors in title; denies that the said complainants and their predecessors in title have been claiming said lands against the world and denies that during all of said period of time, complainants and their predecessors in title have paid taxes thereon and made such use and occupation of the said lands as the same were capable of.

Defendant denies that complainants and their immediate and remote grantors bought said land for a valuable consideration and in good faith; denies that they — a clear record title from the State of Mississippi predicated upon a patent antedating the patent upon which the defendant is asserting title to said land.

Defendant denies that the alleged patent from the State of Mississippi to the Pearl River Improvement & Navigation Company, upon which the title to complainants is founded, constitutes a contract between the Pearl River Improvement & Navigation Company, [fol. 81] and the State of Mississippi, and that said complainants are protected in their title to said land by Article — Section — of the Constitution of the United States. On the contrary, defendant avers that said pretended patent was without consideration, and an attempted donation in violation of Section 6, Article 8 of the Constitution of the State of Mississippi, 1869. Defendant admits that he and his successor in title have been asserting title to and claiming to own said land, but denies that it is a pretended claim of title, and denies that it casts a doubt, cloud or suspicion on complainants' claim of title, on the contrary, defendant avers that his title now vested in

his successor in title is the true, legal and equitable title to said lands, and that the claim of title of complainants to said land casts a cloud, doubt and suspicion on the title of his successor. Defendant denies that this is a suit of civil nature of which this Court has original jurisdiction, and denies that the land in controversy exceeds, exclusive of interest and costs, the sum or value of \$3,000.00.

Defendant avers that the true, legal and equitable title to said land is vested in him and defendant dereigns the title under which he claimed to be the owner of said land as follows:

(1) By an Act of Congress approved September 28th, 1850, said land was granted by the United States to the State of Mississippi, and thereafter said land was patented to the State of Mississippi by the United States, pursuant to the provisions of said Act.

(2) The State of Mississippi, in consideration of the sum of \$—, sold said land to Mose Mitchell, and on December 7th, 1883, [fol. 82] issued its patent therefor to the Said Mose Mitchell, which patent is of record in the Land Deed Records of Pearl River County, Mississippi, Book 5, page 166.

(3) The said Mose Mitchell, for a valuable consideration, on December 27th, 1883, conveyed said land to S. L. Woolridge by a deed bearing that date and of record in Book 5, page 204, of the Land Deed Records of Pearl River County, Mississippi.

(4) That said C. L. Woolridge, for a valuable consideration on January 23, 1885, sold and conveyed said land to Eugene Martin, by a deed bearing that date and of record in Land Deed Book 5, page 219 of the Land Deed Records of Pearl River County, Mississippi.

(5) That the said Eugene Martin, for a valuable consideration on January 23rd, 1885, sold and conveyed said land to J. G. Barrett by a deed bearing that date, and of record in land Deed Book 5, page 223 of the Land Deed Records of Pearl River County, Mississippi.

(6) That the said J. G. Barrett, for a valuable consideration, on July 21st, 1888, sold and conveyed said lands to Henry Clifton Rodes by a deed bearing that date and of record in Book 6, page 5 of the Land Deed Records of Pearl River County, Mississippi.

(7) That the said Henry Clifton Rodes, for a valuable consideration, on August 6th, 1889, sold and conveyed said land to the Southern Pine Company by a deed bearing that date and of record in Book 6, page 42 of the Land Deed Records of Pearl River County, Mississippi.

[fol. 83] (8) That the Southern Pine Company, for a valuable consideration, on the 26th day of January, 1909, sold and conveyed said land to Francis C. Martin, by a deed bearing that date and of record in the Land Deed Records of Pearl River County, Mississippi, Book 15, page 285.

Defendant further avers that by Section 6, Article 8 of the Constitution of the State of Mississippi of 1869, a common school fund

was established to consist of the proceeds of the sale of all swamp and overflowed lands granted to the State under Act of Congress approved September 28, 1850, "Except the swamp lands lying and situated on Pearl River, in the Counties of Hancock, Marion, Lawrence, Simpson and Copiah"; and that the time of the enactment of said Act of March 27th, 1871, attempting to grant, and authorize the issuance of a patent to the land described in the bill of complaint to the Pearl River Improvement & Navigation Company, the predecessor in title of complainants, and at the time of the issuance of the said pretended patent to the said Pearl River Improvement & Navigation Company, under said Act of March 27, 1871, the said Section 6, Article 8 of the Constitution of the State of Mississippi was in full force and effect and the Act of the Secretary of State and Governor in attempting to issue a patent to the said Pearl River Improvement & Navigation Company, conveying said land described in the bill of complaint, was in plain violation of said Section 6, Article 8 of the Constitution of the State of Mississippi of 1869, and were utterly void and vested no title whatever in the said Pearl — Improvement & Navigation Company, the predecessors in title of complainants, for the reason as defendant avers, that said land is [fol. 84] neither on nor near Pearl River, but is remotely situated from Pearl River and is more than eighteen miles east of Pearl River and lies east of the range of hills that divides the watershed of Pearl River, and actually lies east of Wolf River, and upon a tributary of Wolf River running into Wolf River from the east. Defendant further avers that said land drains into Wolf River and many miles of space of territory intervenes between the Western edge of the above described lands and the most eastern edge of any of the swamp and overflowed lands donated to the State, under Act of Congress of September 28th 1850, that, lie either on Pearl River or within the watershed of Pearl River so that said lands neither lie in the valley of Pearl River nor — they contiguous to any swamp and overflowed lands granted to the State by said Act of Congress, which do lie in the valley or watershed of Pearl River. And so it is, defendant avers, that the lands described in the bill of complaint *was* never conveyed to the Pearl River Improvement & Navigation Company, by said patent alleged by complainants to have been issued to the said Pearl River Improvement & Navigation Company, under the Act of March 27th, 1871, and that said pretended patent to the Pearl River Improvement & Navigation Company is illegal and void for the reason that said attempted conveyance to the Pearl River Improvement & Navigation Company by the officers of the State of Mississippi, under Act of March 27, 1871, was in violation of Section 6, Article 8 of the Constitution of the State of Mississippi of 1869.

Defendant further avers that the Supreme Court of the State of Mississippi, in the case of Tynes vs. Southern Pine Company, reported in 54 Southern — page 885, in construing a patent to swamp and overflowed lands not located on Pearl River, and issued to the [fol. 85] Pearl River Improvement & Navigation Company, under said Act of March 27th, 1871, creating the Pearl River Improvement & Navigation Company, held that said patent was void and conveyed no title to the said Pearl River Improvement & Navigation

Company for the reason that said land attempted to be conveyed by said patent was not on Pearl River and the legislature of the State of Mississippi was prohibited by Section 6, Article 8 of the Constitution of the State of Mississippi of 1869, (or (1868) from donating to anybody for any purpose swamp and overflowed lands not situated on Pearl River; that the Supreme Court of the State of Mississippi, in the case of Hardy vs. Hartman, reported in Volume 4, Southern Reporter, page 545, and also in (73 Southern Reporter, page 798) the case of Becker vs. Bank of Columbia, held that all patents issued to the Pearl River Improvement & Navigation Company under said Act of March 27, 1871, are void for the reason that said company did not comply with the condition precedent in said Act that it should execute and file the bond therein provided. The Supreme Court of the State of Mississippi, in the case of Becker vs. Bank of Columbia, *supra*, further held that the decision in the case of Hardy vs. Hartman, *supra* had become a rule of property in the State of Mississippi, and that all parties acquiring property in the State of Mississippi had a right to rely on the law as declared by the decision of the Court of last resort of the State of Mississippi.

Defendant further avers that said *said* Act of 1871, by which said Company was created, did not divest the State of title to said land; but, on the contrary, it expressly provided that before patents to said land could be issued by the State to said Company that a bond in the sum of \$50,000.00 would be executed by said company, filed in the [fol. 86] office of the Secretary of State and approved by the Governor, and the execution, filing and approval of said bond was made by the Act a condition precedent to the patents being issued to said company. And since the Complainants neither allege nor claim that said bond was executed, filed and approved as required by said Act, the patent under which they claim to own said land is absolutely and utterly void.

Defendant further avers that if this Court should hold that the land here involved is on Pearl River within the meaning of the Act of March 27th, 1871, creating the Pearl River Improvement & Navigation Company, then said lands were granted to the Board of Commissioners of the Southern District of Pearl River, by an Act of the Legislature of the State of Mississippi of March 12, 1852, which act expressly granted to the Board of Commissioners of the Southern District of Pearl River, all of the swamp and overflowed lands, lying and situated on Pearl River, in the Counties of Marion, Lawrence, Copiah, and Simpson, and included in the grant of such lands made by Act of Congress of September 28th, 1850, to the State of Mississippi. Defendant further avers that said counties named in said act appointed the Commissioners therein provided for and said Commissioners appointed a Treasurer as by said Act provided. Defendant further avers that said land was at the time of the enactment of March 12, 1852, located in Marion County, but said land is now located in Pearl River County.

So defendant avers that if said land could be held to be land lying and situated on Pearl River, then the title to said land by virtue of the Act of March 12, 1852, passed to the Board of Commissioners of

the Southern District of Pearl River for the benefit of the counties [fol. 87] therein named, and said counties had a vested right in said land at the time the Legislature by said Act of March 27, 1871, attempted to grant the same to the Pearl River Improvement & Navigation Company, and there was no authority in the Legislature of the State of Mississippi to grant said land by the Act of March 27, 1871, to the Pearl River Improvement & Navigation Company and no right in the Legislature of the State of Mississippi to impair the right of the said counties to said land which became vested in said counties by the Act of March 12, 1852. And so it is defendant avers that if said lands are held to be lands on Pearl River, then the patent to the Pearl River Improvement & Navigation Company, under which complainants claim to own said land, is void for the reason that said title to said land was not in the State of Mississippi on March 27, 1871, and there was no authority in the Legislature to grant said lands to the Pearl River Improvement & Navigation Company or any one else.

Defendant further avers that the complainants and their predecessors in title have known for more than forty years that the title under which they claim is utterly and absolutely void and that they have no title to said land, and during all of said years they have made no assertion of their claim of title in any way. And they well know that they could not secure a decree in any Court of the State of Mississippi upholding the validity of their claim of title, and cancelling the title of defendant. Yet in defiance of the repeated decisions of the Supreme Court of the State of Mississippi that all titles of the kind under which they claim to own said land are utterly and totally void they are now attempting to assert said invalid title in this Court. And defendant avers that they filed said suit in this Court in an effort to avoid the effect of the decisions of the Supreme Court of the State [fol. 88] of Mississippi and in the hope that this Court would refuse to follow the decisions of the Supreme Court of the State of Mississippi, which Court above all others has the right to construe the statutes of its own state.

Defendant further avers that the matter, or land, in controversy, exclusive of interests and costs, does not exceed the sum of \$3,000.00 but the value of said land is much less than \$3,000.00, and this Court should refuse to take jurisdiction of this cause.

And now having fully answered all of the allegations of the bill of complaint filed herein against him, or so much and such parts thereof as he is advised, that it is material or necessary for him to make answer to, defendant prays that he may be dismissed with his reasonable costs, etc.

Francis C. Martin, Defendant. Hathorn & Williams, Solicitors for Defendant.

Jurat showing the foregoing was duly sworn to by E. B. Williams omitted in printing.

[Title omitted]

ANSWER OF H. P. LEWIS

Comes the defendant, H. P. Lewis, by his attorneys, and answering so much and such parts of the bill of complaint filed against him herein as he is advised it is material and necessary for him to make answer to, says:

He denies that the complainant-, Edward Hines Yellow Pine Trustees, are the real, true, legal and equitable owners of the land described in the bill of complaint as the S. W. $\frac{1}{4}$ of the N. W. $\frac{1}{4}$ of Section 36, Tp. 2 S. R. 15 West, situated in the county of Pearl River, State of Mississippi, but admits that said land is now situated in that part of Pearl River County which was formerly a part of Marion County, State of Mississippi.

Defendant admits that said lands were donated to the State of Mississippi under and by virtue of an Act of Congress, approved September 28th, 1850, but denies that said lands were patented to the Pearl River Improvement & Navigation Co., in accordance with either an Act of the Legislature of the State of Mississippi, approved on the 8th day of April, 1871, or any other Act of the Legislature; denies that a patent was ever issued by the State of Mississippi to the Pearl River Improvement & Navigation Co. denies that Pearl River Improvement & Navigation Co., for a valuable consideration, on November 20th, 1872, conveyed said lands to M. S. Baldwin; denies that thereafter, on the 17th day of April, 1873, the said M. S. Baldwin, by his attorney in fact, Samuel Vose, for a valuable consideration, conveyed said land to Israel Hall, by deed [fol. 90] of record in Book 15, page 256; denies that Olivia B. Hall acquired title to said land by a last will and testament of her husband, Israel Hall, and denies that the said Israel Hall left a last will and testament and that said alleged will and testament was duly probated in all respects as required by law and named the said Olivia B. Hall as his sole legatee; denies that on July 23, 1900, the said Olivia B. Hall, — quit claim deed, conveyed the said land to Charlotte H. Eastman, and denies that said deed was in confirmation of a deed theretofore executed by the said Israel Hall to Charlotte H. Eastman, wife of Sidney C. Eastman; denies that on May 13th, 1904, M. S. Baldwin executed and delivered unto the said Charlotte H. Eastman a further deed to the said land ratifying and confirming a previous deed executed by Samuel Vose as attorney for the said Baldwin in April, 1873; denies that thereafter on the 5th day of July, 1915, for a valuable consideration, the said Charlotte H. Eastman, and Sidney C. Eastman, by warranty deed, conveyed the said lands to the Wyatt Lumber Company; denies that thereafter on January 1st, 1919, said Wyatt Lumber Company conveyed the same to Edward Hines, C. F. Wiehe, and L. L. Barth, trustees of the Edward Hines Yellow Pine Trustees, by quit claim deed or otherwise.

Defendant admits that he is asserting title in and to the said land by virtue of a patent which was issued by the State of Mississippi to Mose Mitchell on December 7th, 1883, and that the title vested in the said Mose Mitchell become-, by successive conveyances, which will be more fully and particularly hereinafter set out, vested in this defendant.

Defendant denies that the lands involved in this suit are a part of the body of wild timbered lands granted by the State of Mississippi, under the Act of April 8th, 1871, to the Pearl River Improvement & Navigation Co., and denies that said lands came to complainants' predecessor in title from the same source and through the same dereignment and concerning which there has been in years past, litigation between complainants' predecessor in title and the predecessor in title of the defendant. Defendant admits, however, that his predecessors in title to said lands have asserted title to said land under the patent from the State of Mississippi issued to Mose Mitchell, in the year 1883, which patent this defendant avers is a valid patent, and the only valid patent ever issued by the State of Mississippi to said land.

Defendant admits that one of his predecessors in title was the Southern Pine Company, a corporation under the laws of Mississippi, domiciled in Vicksburg, Mississippi, and that Eugene Martin, deceased, was at one time president of the said corporation. As to the allegations in said bill of complaint contained that said Eugene Martin was the dominant power and absolutely controlled the policies and actions of the said corporation and directed the action of the various predecessors in title of the defendant in conveying said property, this defendant has no information or knowledge concerning such allegations and is unable to admit or deny the same, but for the purpose of this suit, and in order to require strict proof of said allegations, defendant denies each and every of said allegations and requires strict proof thereof by the complainant.

Defendant admits that it is true that there was a suit between the Southern Pine Company, and Mrs. Olivia B. Hall, with reference to certain lands at that time being claimed by both said parties, but denies that said litigation was in the year 1905, and denies that the title of the land involved in said litigation was exactly similar to [fol. 92] the title under which the defendant claims the land here in controversy. And defendant avers that the decision of the Circuit Court of Appeals and the Supreme Court of the United States in that case is not in any way controlling upon the Court in this case, for the reason that that case was tried and decided on an agreed statement of facts, in which agreed statement of facts it was expressly agreed that that bond required by the Act of March 27, 1871, was executed and filed by the Pearl River Improvement & Navigation Company, and approved by the Governor of the State of Mississippi, while the defendant herein denies that said bonds, which was a condition precedent to the issuance of the patent to the Pearl River Improvement & Navigation Company, was ever executed, filed and approved by the Governor. Defendant further

avers that the decision of the Circuit Court of Appeals in that cause is not controlling in this case, for the reason that the lands here involved are neither on nor near Pearl River, and under the Constitution of the State of Mississippi of 1869, Section 6, Article 8 thereof, construed in the case of *Tynes vs. Southern Pine Co.*, 54 Southern, 885, the Legislature and officers of the State of Mississippi were prohibited from donating to any body, for any purpose, swamp and overflowed land granted to the State of Mississippi by an Act of Congress of 1850 not situated on Pearl River. And defendant denies that the lands involved in this suit was left out of the suit of the Southern Pine Company against Mrs. Olivia B. Hall by inadvertance or mistake.

Defendant admits that the Southern Pine Company, on the 29th day of September, 1910, filed suit in the Chancery Court of Pearl River County, Mississippi, against Wyatt Lumber Company, one of the alleged predecessors in title of complainants, in which [fol. 93] suit Southern Pine Company dereigned its title to said lands and prayed for a cancellation of the claim of title not then but now being asserted by complainants; and defendant admits that said suit was removed to this Court and by this Court dismissed without prejudice. Defendant denies, however, that on October 23, 1911, he filed a suit against the Wyatt Lumber Company. There was a suit, however, filed by D. W. Blake, predecessor in title to this defendant, on October 23rd, 1911, in the Chancery Court of Pearl River County, against the Wyatt Lumber Company, in which suit the said D. W. Blake sought to remove the claim or title of the said Wyatt Lumber Company, as a cloud upon his title, and said suit, upon petition of the Wyatt Lumber Company, was removed to this Honorable Court. And in the petition for removal, various and sundry imaginary charges were made by the Wyatt Lumber Company to the effect that conveyances had been executed by the Southern Pine Company to prevent this Court from assuming jurisdiction of said cause of action, said charges in said petition of Wyatt Lumber Company being practically the same as the complainants have alleged them to be, but as the said D. W. Blake denied these charges, and took issue thereon, and said suit was dismissed on February 26th, 1918, by this Court under Equity Rule No. 57, without ever being tried on any of the issues there involved, and without the Court determining whether or not the imaginary allegations made by the Wyatt Lumber Company in its said petition were true, defendant now avers that what was alleged in that cause can have no bearing in this case, and is wholly superfluous and redundant matter; but if by setting out the allegations contained in the said suit by D. W. Blake against the said Wyatt [fol. 94] Lumber Company in 1911, which cause now stands dismissed under Equity Rule No. 57 of this Court, it is the intention and purpose of the complainant to re-aver the truth of the allegations in said petition contained, then this defendant denies each and every of said allegations in said petition contained, and defendant denies that the land described in the bill of complaint was conveyed by the Southern Pine Company to D. W. Blake, for the purpose

of preventing this Court assuming jurisdiction in said cause; defendant further denies that the sole object of said conveyance from the Southern Pine Company to D. W. Blake was for the purpose of dividing the said land so that the value of the land held by each particular vendee would be less than the sum of \$3,000.00, and thereby defeat the removal of said controversies to this Court.

Defendant denies that said conveyances were simulated and pretended conveyances and that they were not in fact conveyances and were never intended to pass the title [title] claimed by the said Southern Pine Company. Predecessors in title, to this defendant, and denies that the equitable title to said land was left in the Southern Pine Company, and that said corporation has since said conveyances, with the knowledge and consent of said vendees, continued to claim and assert title thereto, but on the contrary defendant avers that the Southern Pine Company has not owned or claimed to own the said — since the execution of its deed conveying said land to D. W. Blake. Defendant denies that there was no consideration for the conveyance of said land by the Southern — Company to the said D. W. Blake, and denies that said conveyance was wholly voluntarily and simulated and that said vendees and each of them, held only the legal title to said land. Defendant further denies each and every allegation of complainants that the defendant D. W. [fol. 95] Blake, held the legal title to said land in trust for the benefit of the Southern Pine Company, and that said conveyance was made for the sole purpose of defeating the removal of said cause to the United States District Court. Defendant denies that his predecessors in title after the discontinuances of said suits — all claim to said land, but avers that they have been claiming and conveying the title to said land since the dismissal of said suits and the dismissal of the suit filed by the Southern Pine Company against Wyatt Lumber Company, as will appear from the records of Pearl River County, Mississippi, and the dereliction of the title of defendant hereinafter set forth.

Defendant admits that it has been more than ten years since the filing of said suits, but denies that he and his predecessors in title have permitted complainants and their predecessors in title to pay taxes on said land; denies that complainants and their predecessors in title have paid the taxes on said lands; denies that he or his predecessors in title have permitted complainants to be and remain in the active possession and control thereof, but on the contrary defendant avers that he and his predecessors in title have paid the taxes on said land, except when complainant — rushed in ahead of him and his predecessors in title and paid the taxes thereon. And defendant further avers that there has never been any actual possession and control of said land of any kind, by either the complainants and their predecessors in title or defendant and his predecessors in title. Defendant denies that the failure of D. W. Blake to prosecute his said cause of action against the Wyatt Lumber Company, and permitting the same to be dismissed under Equity Rule No. 57 of this Court, constitutes such negligence and laches as

to bar this defendant and his predecessors in title from asserting their [fol. 96] title by way of defense or otherwise against the pretended and simulated claim of title of complainants and denies that he or his predecessors in title should be restrained from making defense to the bill of complaint filed herein by complainants; and defendant denies that it has been more than ten years since the right to bring action as to these lands or any part thereof; has first accrued to the defendant and his predecessors in title or some persons through whom he claims and denies that the right of the defendant herein to claim said lands through the Southern Pine Company, or said Martins, is now barred by the statutes of limitations of the State of Mississippi. On the contrary, defendant avers that the complainants have never owned or had a valid title on which to base a claim of title to said land, and whatever title that they or their predecessors in title have claimed to have amounts to no more than color of title and since the complainants have never gone into the actual possession and control of said land, the statutes of limitations of the State of Mississippi have never put into operation in favor of complainants and against defendant, and his predecessors in title. The defendant and his predecessors in title are, therefore, not barred by the statutes of limitations of the State of Mississippi from showing by way of defense to the suit instituted by the complainants against him, that complainants are not the owners of said land and that he is the real owner thereof.

Defendant again denies that he or his predecessors in title are precluded from asserting title to said land by way of defense in this suit or otherwise, because said cause of action of D. W. Blake against Southern Pine Company was dismissed by this Court under Equity Rule No. 57, for want of prosecution; and this defendant especially denies that the said land has for a period of more than [fol. 97] ten years next preceding the filing of this bill, been in the open, visible, notorious, exclusive, hostile and continuous adverse possession of complainants and their predecessors in title; denies that the said complainants and their predecessors in title have been claiming said lands against the world and denies that during all of said period of time, complainants and their predecessors in title paid the taxes thereon and made such use and occupation of the said lands as *the said lands as the same were capable of*.

Defendant denies that complainants and their immediate and remote grantors bought said land for a valuable consideration and in good faith; denies that they have a clear record title from the State of Mississippi predicated upon a patent antedating the patent upon which the defendant is asserting title to said land. Defendant denies that the alleged patent from the State of Mississippi to the Pearl River Improvement & Navigation Company, upon which the title to complainants is founded, constitutes a contract between the Pearl River Improvement & Navigation Company, and the State of Mississippi, and that said complainants are protected in their title to said land by Article —, Section —, of the Constitution of the United States. On the contrary, defendant avers that said pretended patent was without consideration, and an attempted donation

in violation of Section 6, Article 8 of the Constitution of the State of Mississippi of 1869. Defendant admits that he is asserting title to and claiming to own said land, but denies that it is a pretended claim of title, and denies that it casts a doubt, cloud or suspicion on complainants' claim of title, on the contrary defendant avers that his title is true, legal and equitable title to said lands, and that the claim of title of complainants to said land casts a cloud, doubt and [fol. 98] suspicion on his title. Defendant denies that this is a suit of civil nature of which this Court has original jurisdiction, and denies that the land in controversy exceeds, *exceeds*, exclusive of interest and cost the sum of value of \$3,000.00.

Defendant avers that the true, legal and equitable title to said land is vested in him and defendant dereigns the title under which he claims to be true owner of said la-s as follows:

(1) By an Act of Congress approved September 28th, 1850, said land was granted by the United States to the State of Mississippi, and thereafter said land was patented to the State of Mississippi, by the *United River County, Mississippi Book 5, page 166.*

(2) The State of Mississippi, in consideration of the sum of \$— sold said land to Moses Mitchell, and on December 7th, 1883, issued its patent therefor to the said Moses Mitchell, which patent is of record in the Land Deed Records of Pearl River County, Mississippi, Book 5, page 166.

(3) The said Moses Mitchell, for a valuable consideration, on December 27th, 1883, conveyed said land to S. L. Woolridge by a deed bearing that date and of record in Book 5, page 204, of the Land Deed Records of Pearl River County, Mississippi.

(4) That said S. L. Woolridge, for a valuable consideration on January 23rd, 1885, sold and conveyed said land to Eugene Martin, by a deed bearing that date and of record in Land Deed Book 5, page 219, of the Land Deed Records of Pearl River County, Mississippi.

[fol. 99] (5) That the said Eugene Martin, for a valuable consideration, on January 23rd, 1885, sold and conveyed said land to J. C. Barrett by a deed bearing that date, and of record in Land Deed Book 5, page 223, of the Land Deed Records of Pearl River County, Mississippi.

(6) That the said J. G. Barrett, for a valuable consideration, on July 21st, 1888, sold and conveyed said lands to Henry Clifton Rodes by a deed bearing that date and of record in Book 6, page 5 of the Land Deed Records of Pearl River County, Mississippi.

(7) That the said Henry Clifton Rodes, for a valuable consideration, on August 6th, 1889, sold and conveyed said land to the Southern Pine Company by a deed bearing that date and of record in Book 6, page 42, of the Land Deed Records of Pearl River County, Mississippi.

(8) That the Southern Pine Company, for a valuable consideration, on the 26th day of January, 1909, sold and conveyed said land to D. W. Blake, by a deed bearing that date and of record in the Land Deed Records of Pearl River County, Mississippi, Book 15, page 286.

(9) That the said D. W. Blake, for a valuable consideration, on the 14th day of June, 1920, sold and conveyed said lands to H. P. Lewis, the defendant, by a deed bearing that date and of record in Book 27, page 307, of the Land Deed Records of Pearl River County, Mississippi.

Defendant further avers that by Section 6, Article 8, of the Constitution of the State of Mississippi of 1869, a common school [fol. 100] fund was established to consist of the proceeds of the sale of all swamp and overflowed lands granted to the state under Act of Congress approved September 28th, 1850, "except the swamp lands lying and situated on Pearl River, in the counties of Hancock, Marion, Lawrence, Simpson and Copiah"; and that at the time of the enactment of said Act of March 27th, 1871, attempting to grant and authorize the issuance of a patent to the land described in the bill of complaint to the Pearl River improvement & Navigation Company, the predecessors in title of complainants, and at the time of the issuance of the said pretended patent to the said Pearl River Improvement & Navigation Company, under said Act of March 27, 1871, the said Section 6, Article 8 of the Constitution of the State of Mississippi was in full force and effect and the Act of the Secretary of State and Governor in attempting to issue a patent to the said Pearl River Improvement & Navigation Company, conveying said land described in the bill of complaint, was in plain violation of said Section 6, Article 8 of the Constitution of the State of Mississippi of 1869, and were void and vested no title whatever in the said Pearl River Improvement & Navigation Company, the predecessors in title of complainants, for the reason as defendant avers that said land is neither on nor near Pearl River, but is remotely situated from Pearl River and is more than eighteen miles East of Pearl River and lies East of the range of hills that divides the watershed of Pearl River from that of Wolf River, and actually lies East of Wolf River, and upon a tributary of Wolf River running into Wolf River from the East. Defendant further avers that said land drains into Wolf River and many miles of space of territory intervenes between the Western Edge of the above described lands [fol. 101] and the most Eastern edge of any part of the swamp and overflowed lands donated to the State, under Act of Congress of September 28th, 1850, that lie either on Pearl River or within the watershed of Pearl River; so that said lands neither lie in the valley of Pearl River nor are they contiguous to any swamp and overflowed lands granted to the State by said Act of Congress, which do lie in the valley or watershed of Pearl River. And so it is, defendant avers, that the lands described in the bill of complaint was never conveyed to the Pearl River Improvement & Navigation

Company, by said patent alleged by complainants to have been issued to the said Pearl River Improvement & Navigation Company, under the Act of March 27th, 1871, and that said pretended patent to the Pearl River Improvement Company is illegal and void for the reason that said attempted conveyances to the Pearl River Improvement & Navigation Company, by the officers of the State of Mississippi, under Act of March 27, 1871, was in violation of Section 6, Article 8 of the Constitution of the State of Mississippi of 1869.

Defendant further avers that the Supreme Court of the State of Mississippi, in the cause of *Tynes vs. Southern Pine Company*, reported in 54 Southern —, page 885, in construing a patent to swamp and overflowed lands not located on Pearl River, and issued to the Pearl River Navigation & Improvement Company, under said Act of March 27, 1871, creating the Pearl River Improvement & Navigation Company, held that said patent was void and conveyed no title to the said Pearl River Improvement & Navigation Company for the reason that said land attempted to be conveyed by said patent was not on Pearl River and the Legislature of the State of Mississippi was prohibited by Section 6, Article 8 of the Constitution of the State of Mississippi of 1869, (or 1868) from donating to [fol. 102] anybody for any purpose swamp and overflowed lands not situated on Pearl River; that the Supreme Court of the State of Mississippi, in the case of *Hardy vs. Hartman*, reported in Volume 4, Southern Reporter, page 545, and also in (73 Southern Reporter, page 798), the case of *Becker vs. Bank of Columbia*) held that all patents issued to the Pearl River Improvement & Navigation Company under said Act of March 27, 1871, are void for the reason that said company did not comply with the condition precedent in said act that it should execute and file bond therein provided. The Supreme Court of the State of Mississippi, in the case of *Becker vs. Bank of Columbia*, supra, further held that the decision in the case of *Hardy vs. Hartman*, supra, had become a rule of property in the State of Mississippi, and that all parties acquiring property in the State of Mississippi had a right to rely on the law as declared by the decision of the Court of last resort of the State of Mississippi.

Defendant further avers that said Act of 1871, by which said company was created, did not divest the State of title to said land; but, on the contrary, it expressly provided that before patents to said land could be issued by the State to said company that a bond in the sum of \$50,000.00 should be executed by said company, filed in the office of the Secretary of State and approved by the Governor, and the execution, filing and approval of said bond was made by the act a condition precedent to the patents being issued to said company. And since the complainants neither allege nor claim that said bond was executed, filed and approved as required by said act, the patent under which they claim to own said land is absolutely and utterly void.

Defendant further avers that if this Court should hold that the land here involved is on Pearl River within the meaning of the Act [fol. 103] of March 27, 1871, creating the Pearl River Improve-

ment & Navigation Company, then said lands were granted to the Board of Commissioners of the Southern District of Pearl River, by an Act of the Legislature of the State of Mississippi of March 12, 1852, which act expressly granted to the Board of Commissioners of the Southern District of Pearl River, all of the Swamp and overflowed lands, lying and situated on Pearl River, in the counties of Marion, Lawrence, Hancock, Copiah and Simpson, and included in the grant of such lands made by Act of Congress of September 28, 1850, to the State of Mississippi. Defendant further avers that said counties named in said act appointed the Commissioners therein provided for and said Commissioners appointed a Treasurer as by said act provided. Defendant further avers that said land was at the time of the enactment of March 12, 1852, located in Marion County, but said land is now located in Pearl River County.

So defendant avers that if said land could be held to be land lying and situated on Pearl River, then the title to said land by virtue of the Act of March 12, 1852, passed to the Board of Commissioners of the Southern District of Pearl River for the benefit of the counties therein named, and said counties had a vested right in said land at the time the Legislature by said act of March 27, 1871, attempted to grant the same to the Pearl River Improvement & Navigation Company and there was no authority in the Legislature of the State of Mississippi to grant said land by Act of March 27, 1871, to the Pearl River Improvement & Navigation Company and no right in the Legislature of the State of Mississippi to impair the right of the said counties to said land which became vested in said counties by Act of March 12, 1852. And so it is defendant avers that if said lands are [fol. 104] held to be lands on Pearl River, then the patent to the Pearl River Improvement & Navigation Company, under which complainants claim to own said land, is void for the reason that said title to said land was not in the State of Mississippi on March 27, 1871, and there was no authority in the Legislature to grant said lands to the Pearl River Improvement & Navigation Company or any one else.

Defendant further avers that the complainants and their predecessors in title have known for more than forty years that the title under which they claim is utterly and absolutely void and that they have no title to said land, and during all of said years they have made no assertion of their claim of title in any way. And they well know that they could not secure a decree in any Court in the State of Mississippi upholding the validity of their claim of title, and cancelling the title of defendant. Yet in defiance of the repeated decisions of the Supreme Court of the State of Mississippi that all titles of the kind under which they claim to own said land are utterly and totally void they are now attempting to assert said invalid title in this Court. And defendant avers that they filed said suit in this Court in an effort to avoid the effect of the decisions of the Supreme Court of the State of Mississippi and in the hope that this Court would refuse to follow the decisions of the Supreme Court of the State of Mississippi, which Court, above all others, has the right to construe the statutes of its own state.

Defendant further avers that the matter, or land, in controversy, exclusive of interest and costs, does not exceed the sum of \$3,000.00 but the value of said land is much less than \$3,000.00, and this Court should refuse to take jurisdiction of this cause.

[fol. 105] And now having fully answered all of the allegations of the bill of complaint filed herein against him, or so much and such parts thereof as he is advised that it is material or necessary for him to make answer to, defendant prays that he may be dismissed with his reasonable costs, etc.

H. P. Lewis, Defendant. Hathorn & Williams, Solicitors for Defendant.

Jurat showing the foregoing was duly sworn to by E. B. Williams omitted in printing.

[fol. 106] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER OF GEORGE LAWRENCE

Comes the defendant, George Lawrence, by his attorneys, and answering so much and such parts of the bill of complaint filed against him herein as he is advised it is material and necessary for him to make answer to, says:

He denies that the complainant, Edward Hines Yellow Pine Trustees, are the real, true and legal and equitable owners of the land described in the bill of complaint as the S. E. $\frac{1}{4}$ of the N. W. $\frac{1}{2}$ of Section 36, Tp. 2 S. R., 15 West, situated in the County of Pearl River, State of Mississippi, but admits that said land is now situated in that part of Pearl River County which was formerly a part of Marion County, State of Mississippi.

Defendant admits that said lands were donated to the State of Mississippi under and by virtue of an Act of Congress, approved September 28th, 1850, but denies that said lands were patented to the Pearl River Improvement & Navigation Co., in accordance with either an Act of the Legislature of the State of Mississippi, approved on the 8th day of April, 1871, or any other Act of the Legislature; denies that a patent was ever issued by the State of Mississippi to the Pearl River Improvement & Navigation Co., denies that Pearl River Improvement & Navigation Co., for a valuable consideration, on November 20th, 1872, conveyed said lands to M. S. Baldwin; denies [fol. 107] that thereafter, on the 17th day of April, 1873, the said M. S. Baldwin by his attorney in fact, Samuel Vose, for a valuable consideration, conveyed said land to Israel Hall, by deed of Record in Book 15, page 256; denies that Olivia B. Hall acquired title to said land by a last will and testament of her husband, Israel Hall, and denies that the said Israel Hall left a last will and testament and that said alleged will and testament was duly probated in all respects as required by law and named the said Olivia B. Hall as his sole legatee;

denies that on July 23, 1900, the said Olivia B. Hall, by quit claim deed, conveyed the said land to Charlotte H. Eastman, and denies that said deed was in confirmation of deed theretofore executed by the said Israel Hall to Charlotte H. Eastman, wife of Sidney C. Eastman; denies that on May 13th, 1904, M. S. Baldwin executed and delivered unto the said Charlotte H. Eastman a further deed to the said land ratifying and confirming a previous deed executed by Samuel Vose as attorney for the said Baldwin in April, 1873; denies that thereafter on the 5th day of July, 1915, for a valuable consideration, the said Charlotte H. Eastman, by warranty deed, conveyed the said lands to the Wyatt Lumber Company; denies that thereafter on January 1st, 1919, said Wyatt Lumber Company conveyed the same to Edward Hines, C. F. Wiehe, and L. L. Barth, trustees of the Edward Hines Yellow Pine Trustees, by quit claim deed or otherwise.

Defendant admits that he is asserting title in and to the said land by virtue of a patent which was issued by the State of Mississippi to Mose Mitchell on December 7th, 1883, and that the title vested in the said Mose Mitchell became, by successive conveyances, which will be more fully and particularly hereinafter set out, vested in this defendant.

[fol. 108] Defendant denies that the lands involved in this suit are a part of the body of wild timbered lands granted by the State of Mississippi, under the Act of April 8th, 1871, to the Pearl River Improvement & Navigation Co., and denies that said lands came to complainants' predecessor in title from the same source and through the same dereignment and concerning which there has been in years past, litigation between complainants' predecessor in title and the predecessor in title of the defendant. Defendant admits, however, that his predecessors in title to said lands have asserted title to said land under the patent from the State of Mississippi issued to Mose Mitchell, in the year 1883, which patent this defendant avers is a valid patent, and, the only valid patent ever issued by the State of Mississippi to said land.

Defendant admits that one of his predecessors in title was the Southern Pine Company, a corporation under the laws of Mississippi, domiciled in Vicksburg, Mississippi, and that Eugene Martin, deceased, was at one time president of the said corporation. As to the allegations in said bill of complaint contained that said Eugene Martin was the dominant power and absolutely controlled the policies and actions of the said corporation and directed the action of the various predecessors in title of the defendant in conveying said property, this defendant had no information or knowledge concerning such allegations and is unable to admit or deny the same, but for the purpose of this suit, and in order to require strict proof of said allegations, defendant denies each and every of said allegations and requires strict proof thereof by the complainant.

Defendant admits that it is true that there was a suit between the Southern Pine Company, and Mrs. Olivia B. Hall, with reference to [fol. 109] certain lands at that time being claimed by both said parties, but denies that said litigation was in the year 1905, and denies that the title of the land in said litigation was exactly similar to the title under which the defendant claims the land here in con-

trovery. And defendant avers that the decision of the Circuit Court of Appeals and the Supreme Court of the United States in that case is not in any way controlling upon the Court in this case, for the reason that that case was tried and decided on an agreed statement of facts it was expressly agreed that the bond required by the Act of March 27, 1871, was executed and filed by the Pearl River Improvement & Navigation Company, and approved by the Governor of the State of Mississippi while the defendant herein denies that said bonds, which was a condition precedent to the issuance of the patent to the Pearl River Improvement & Navigation Company, was never executed, filed and approved by the Governor. Defendant further avers that the decision of the Circuit Court of Appeals in that cause is not controlling in this case, for the reason that the lands here involved are neither on or near Pearl River, and under the Constitution of the State of Mississippi of 1869, Section 6, Article 8 thereof, construed in the case of *Tynes vs. Southern Pine Co.*, 54 Southern 885, the Legislature and officers of the State of Mississippi were prohibited from donating to any body, for any purpose, swamp and overflowed land granted to the State of Mississippi by an Act of Congress of 1850 not situated on Pearl River. And defendant denies that the lands involved in this suit *was* left out of the suit of the Southern Pine Company against Mrs. Olivia B. Hall by inadvertence or mistake.

[fol. 110] Defendant admits that the Southern Pine Company, on the 29th day of September, 1910, filed suit in the Chancery Court of Pearl River County, Mississippi, against Wyatt Lumber Company, one of the alleged predecessors in title of complainants, in which suit Southern Pine Company dereigned its title to said lands and prayed for a cancellation of the claim of title not then but now being asserted by complainants; and defendant admits that said suit was removed to this Court and by this Court dismissed without prejudice. Defendant denies, however, that on October 23, 1911, he filed a suit against the Wyatt Lumber Company. There was a suit however, filed by Cecile Dowling, predecessor in title to this defendant, on October 23rd, 1911, in the Chancery Court of Pearl River County, against the Wyatt Lumber Company, in which suit the said Cecile Dowling sought to remove the claim of title of the said Wyatt Lumber Company, as a cloud upon his title, and said suit, upon petition of the Wyatt Lumber Company, was removed to this Honorable Court. And in the petition for removal, various — sundry imaginary charges were made by the Wyatt Lumber Company to the effect that conveyances had been executed by the Southern Pine Company to prevent this Court from assuming jurisdiction of said cause of action, said charges in said petition of Wyatt Lumber Company being practically the same as the complainants have alleged them to be, but as the said Cecile Dowling denied these charges, and took issue thereon, and said suit was dismissed on February 26th, 1918, by this Court under Equity Rule No. 57, without said cause ever being tried on any of the issues there involved, and without the Court determining whether or not the imaginary allegations made by the Wyatt Lumber Company in its said petition were true,

[fol. 111] defendant now avers that what was alleged in that cause can have no bearing in this case, and is wholly superfluous and redundant matter; but if by setting out the allegations contained in the said suit by Cecile Dowling against the said Wyatt Lumber Company in 1911, which cause now stands dismissed under Equity Rule No 57 of this Court, it is the intention and purpose of the complainant to recover the truth of the allegations in said petition contained, then this defendant denies each and every of said allegations in said petition contained, and defendant, denies that the land described in the bill of complaint was conveyed by the Southern Pine Company to Cecile Dowling for the purpose of preventing the Court from assuming jurisdiction in said cause; defendant further denies that the sole object of said conveyance from the Southern Pine Company to Cecile Dowling was for the purpose of dividing the said land so that the value of the land held by each particular vendee would be less than the sum of \$3,000.00 and thereby defeat the removal of said controversies to this Court.

Defendant denies that said conveyances were simulated and pretended conveyances and that they were not in fact conveyances and were never intended to pass the title claimed by the said Southern Pine Company, predecessor in title, to this defendant, and denies that the equitable title to said land was left in the Southern Pine Company, and that said corporation has since said conveyance, with the knowledge and consent of said vendees, continued to claim and assert title thereto, but on the contrary, defendant avers that the Southern Pine Company has not owned or claimed to own the said land since the execution of its deed conveying said land to Cecile Dowling, denies that there was no consideration for the conveyance [fol. 112] of said land by the Southern Pine Company to the said Cecile Dowling and denies that said conveyance was wholly voluntarily and simulated and that said vendees and each of them, held only the legal title to said land. Defendant further denies each and every allegation of complainants that the defendant, Cecile Dowling held the legal title to said land in trust for the benefit of the Southern Pine Company, and that said conveyance was made for the sole purpose of defeating the removal of said cause to the United States District Court.

Defendant denies that his predecessors in title after the discontinuance of said suits abandoned all claim to said land, but avers that they have been claiming and conveying the title to said land since the dismissal of said suits and the suit filed by the Southern Pine Company against Wyatt Lumber Company, as will appear from the records of Pearl River County, Mississippi, and the dereignment of the title of defendant hereinafter set forth. Defendant admits that it has been more than ten years since the filing of said suits, but denies that he and his predecessors in title have permitted complainants and their predecessors in title to pay taxes on said land; denies that complainants and their predecessors in title have paid the taxes on said land; denies that he or his predecessors in title have permitted complainants to be and remain in the active possession and control thereof, but on the contrary defendant avers

that he and his predecessors in title have paid the taxes on said land, except when complainants rushed in ahead of him and his predecessors in title and paid the taxes thereon. And defendants further avers that there has never been any actual possession and control of said land of any kind, by either the complainants and their predecessors in title or defendant and his predecessors in title. [fol. 113] Defendant denies that the failure of Cecile Dowling to prosecute his said cause of action against the Wyatt Lumber Company, and permitting the same to be dismissed under Equity Rule No. 57 of this Court, constitutes such negligence and laches as to bar this defendant and his predecessors in title from asserting their title by way of defense or otherwise against the pretended and simulated claim of title of complainants, and denies that he or his predecessors in title should be restrained from making defense to the bill of complaint filed herein by complainants; and defendant denies that it has been more than ten years since the right to bring an action as to these lands or any part thereof, has first accrued to the defendant and his predecessors in title or some persons through whom he claims and denies that the right of the defendant herein to claim said lands through the Southern Pine Company, or the said Martins, is now barred by the statutes of limitations of the State of Mississippi. On the contrary defendants avers that the complainants have never owned or had a valid title on which to base a claim of title to said land, and whatever title that they or their predecessors in title have claimed to have amounts to no more than color of title and since the complainants have never gone into the actual possession and control of said land, the statutes of limitations of the State of Mississippi have never been put into operation in favor of complainants and against defendant, and his predecessors in title. The defendant and his predecessors in title are, therefore, not barred by the Statutes of limitations of the State of Mississippi from showing by way of defense to the suit instituted by the complainants against him, that complainants are not the owners of said land and that he is the real owner thereof.

[fol. 114] Defendant again denies that he or his predecessors in title are precluded from asserting title to said land by way of defense in this suit or otherwise, because said cause of action of Cecile Dowling against Southern Pine Company was dismissed by this Court under Equity Rule No. 57, for want of prosecution; and this defendant especially denies that the said land has for a period of more than ten years next preceeding the filing of this bill, been in the open, visible, notorious, exclusive, hostile and continuous adverse possession of complainants and their predecessors in title, denies that the said complainants and their predecessors in title have been claiming said lands against the world and denies that during all of the said period of time, complainants and their predecessors in title paid the taxes thereon and made such use and occupation of the said lands as the same were capable of.

Defendant denies that complainants and their immediate and remote grantors bought said land for a valuable consideration and in good faith; denies that they have a clear record title from the State

of Mississippi predicated upon a patent antedating the patent upon which the defendant is asserting title to said land. Defendant denies that the alleged patent from the State of Mississippi to the Pearl River Improvement & Navigation Company upon which the title to complainants is founded, constitutes a contract between the Pearl River Improvement & Navigation Company, and the State of Mississippi, and that said complainants are protected in their title to said land by Article — Section — of the Constitution of the United States, on the contrary, defendant avers that said pretended patent was without consideration and an attempted donation in violation of Section 6, Article 8, of the Constitution of the State of Mississippi of 1869. Defendant admits that he is asserting title to and claiming to own said land, but denies that it is a pretended claim of title, and denies that it casts a doubt, cloud or suspicion on complainants' claim of title, on the contrary defendant avers that his title is the true, legal and equitable title to said lands, and that the claim of title of complainants to said land casts a cloud, doubt and suspicion on his title. Defendant denies that this is a suit of a civil nature of which this Court has original jurisdiction, and denies that the land in controversy exceeds, exclusive of interest and cost the sum or value of \$3,000.00.

Defendant avers that the true, legal and equitable title to said land is vested in him and defendant dereigns the title under which he claims to be the true owner of said land, as follows:

(1) By an act of Congress approved September 28th, 1850, said land was granted by the United States to the State of Mississippi, and thereafter said land was patented to the State of Mississippi by the United States, pursuant to the provisions of said Act of Congress.

(2) The State of Mississippi in consideration of the sum of \$—, sold said land to Mose Mitchell, and on December 7th, 1883, issued its patent therefore to the said Moses Mitchell, which patent is of record in the Land Deeds of Pearl River County, Mississippi, Book 5, page 166.

(3) The said Moses Mitchell, for a valuable consideration, on December 7th, 1883, conveyed said land to S. L. Woolridge by a deed bearing that date and of record in Book 5, page 204 of the Land Deed Records of Pearl River County, Mississippi.

[fol. 116] (4) That said S. L. Woolridge, for a valuable consideration on January 23rd, 1885, sold and conveyed said land to Eugene Martin, by deed bearing that date and of record in Land Deed Book 5, page 219 of the Land Deed Records of Pearl River County, Mississippi.

(5) That the said Eugene Martin, for a valuable consideration on January 23rd, 1885, sold and conveyed said land to J. G. Barrett by a deed bearing that date, and of record in Land Deed Book 5, page 223 of the Land Deed Records of Pearl River County, Mississippi.

(6) That the said J. G. Barrett, for a valuable consideration, on July first, 1888, sold and conveyed said land to Henery Clifton Rodes

by a deed bearing that date and of record in Book 6, page 5 of the Land Deed Records of Pearl River County, Mississippi.

(7) That the said Henry Clifton Rodes, for a valuable consideration, on August 6th, 1889, sold and conveyed said land to the Southern Pine Company by a deed bearing that date and of record in Book 6, page 42, of the Land Deed Records of Pearl River County, Mississippi.

(8) That the Southern Pine Company, for a valuable consideration on the 26th day of January, 1909, sold and conveyed said land to Cecile Dowling by a deed bearing that date and of record in the Land Deed Records of Pearl River County, Mississippi, Book 15, page 285.

(9) That the said Cecile Dowling, for a valuable consideration, on the 12th day of June 1920, sold and conveyed said lands to George [fol. 117] Lawrence, the defendant, by a deed bearing that date and of record in Book 27, page 335 of the Land Deed Records of Pearl River County, Mississippi.

Defendant further avers that by Section 6, Article 8 of the Constitution of the State of Mississippi of 1869, a common school fund was established to consist of the proceeds of the sale of all swamp and overflowed lands granted to the State under Act of Congress approved September 28, 1850, Except the swamp lands lying and situated on Pearl River, in the counties of Hancock, Marion, Lawrence, Simpson and Copiah;" and that at the time of the enactment of said Act of March 27th, 1871, attempting to grant, and authorize the issuance of a patent to, the land described in the bill of complaint of the Pearl River Improvement & Navigation Company, the predecessor in title of complainants, and at the time of the issuance of the said pretended patent to the said Pearl River Improvement & Navigation Company, under said Act of March 27, 1871, the said Section 6, Article 8 of the constitution of the State of Mississippi was in full force and effect and the Act of the Secretary of State and Governor in attempting to issue a patent to the said Pearl River Improvement Company, conveying said land described in the bill of complaint, was in plain violation of said Section 6, Article 8 of the constitution of the State of Mississippi of 1869, and were utterly void and vested no title in the said Pearl River Improvement & Navigation Company the predecessors in title of complainants, for the reason that defendant avers, that said land is neither on nor near Pearl River, but is remotely situated from Pearl River and is more than eighteen miles East of Pearl [fol. 118] River and lies East of the range of hills that divides the watershed of Pearl River from that of Wolf River, and actually lies East of Wolf River and upon a tributary of Wolf River running into Wolf River from the East. Defendant further avers that said land drains into Wolf River and many miles of space of territory intervenes between the Western edge of the above described lands and the most Eastern edge of any part of any of the swamp and overflowed lands donated to the state, under Act of Congress of September 28th, 1850, that lie either on Pearl River or within the watershed of Pearl

River; so that said lands neither lie in the valley of Pearl River nor are they contiguous to any swamp and overflowed lands granted to the state by said Act of Congress, which do lie in the valley or watershed of Pearl River. And so it is, defendant avers, that the lands described in the bill of complaint *was* never conveyed to the Pearl River Improvement & Navigation Company, by said patent alleged by complainants to have been issued to the said Pearl River Improvement & Navigation Company, under the Act of March 27th, 1871, and that said pretended patent to the Pearl River Improvement Company is illegal and void for the reason that said attempted conveyances to the Pearl River Improvement & Navigation Company, by the officers of the State of Mississippi, under Act of March 27, 1871, was in violation of Section 6, Article 8 of the Constitution of the State of Mississippi of 1869.

Defendant further avers that the Supreme Court of the State of Mississippi, in the case of *Tynes vs. Southern Pine Company*, reported in 54 Southern, page 885, in construing a patent to swamp and overflowed lands not located on Pearl River and issued to the Pearl River Navigation & Improvement Company, under said Act of [fol. 119] March 27, 1871, creating the Pearl River Improvement & Navigation Company, held that said patent was void and conveyed no title to the said Pearl River Improvement Company for the reason that said land attempted to be conveyed by said patent was not on Pearl River, and the Legislature of the State of Mississippi was prohibited by Section 6, Article 8 of the Constitution of the State of Mississippi of 1869, (or 1868) from donating to any body for any purpose swamp and overflowed lands not situated on Pearl River; that the Supreme Court of the State of Mississippi, in the case of *Hardy vs. Hartman*, reported in Volume 4, Southern Reporter, page 545, and also in (73 Southern Reporter, page 798) the case of *Becker vs. Bank of Columbia*, held that all patents issued to the Pearl River Improvement & Navigation Company under said Act of March 27, 1871, are void for the reason that said Company did not comply with the condition precedent in said act that it should execute and file the bond therein provided. The Supreme Court of the State of Mississippi, in the case of *Becker vs. Bank of Columbia*, supra, further held that the decision in the case of *Hardy vs. Hartman*, supra, had become a rule of property in the State of Mississippi and that all parties acquiring property in the State of Mississippi had a right to rely on the law as declared by the decision of the Court of last resort of the State of Mississippi.

Defendant further avers that said act of 1871, by which said company was created, did not divest the state of title to said land: on the contrary, it expressly provided that before patents to said land could be issued by the state to said company that a bond in the sum of \$50,000.00 should be executed by said company, filed in the [fol. 120] office of the Secretary of State and approved by the Governor, and the execution, filing and approval — said bond was made by the act a condition precedent to the patents being issued to said company. And since the complainants neither allege nor claim that said bond was executed, filed and approved as required by said act,

the patent under which they claim to own said land is absolutely and utterly void.

Defendant further avers that if this Court should hold that the land here involved is on Pearl River within the meaning of the Act of March 27, 1871, creating the Pearl River Improvement & Navigation Company, then said lands were granted to the Board of Commissioners of the Southern District of Pearl River, by an Act of the Legislature of the State of Mississippi of March 12, 1852, which Act expressly granted to the Board of Commissioners of the Southern District of Pearl River, all of the swamp and overflowed lands, lying and situated on Pearl River, in the counties of Marion, Lawrence, Hancock, Copiah and Simpson, and included in the grant of such lands made by Act of Congress of September 28, 1850, to the State of Mississippi. Defendant further avers that said counties named in said act appointed the Commissioners therein provided for and said Commissioners appointed a Treasurer as by said act provided, Defendant further avers that said land was at the time of the enactment of March 12, 1852 located in Marion County, but said land is now located in Pearl River County.

So defendant avers that if said land could be held to be land lying and situated on Pearl River, then the title to said land by virtue of the Act of March 12, 1852, passed to the Board of Commissioners of the Southern District of Pearl River for the benefit of the counties therein named, and said counties had a vested right in said land at [fol. 121] the time the Legislature by said act of March 27, 1871, attempted to grant the same to the Pearl River Improvement & Navigation Company, and there was no authority in the Legislature of the State of Mississippi to grant said land by the Act of March 27, 1871, to the Pearl River Improvement & Navigation Company and no right in the Legislature of the State of Mississippi to impair the right of the said counties to said land which became vested in said counties by the Act of March 12, 1852. And so it is defendant avers that if said lands are held to be lands on Pearl River, then the patent to the Pearl River Improvement & Navigation Company, under which complainants claim to own said land, is void for the reason that said title to said land was not in the State of Mississippi on March 27, 1871, and there was no authority in the Legislature to grant said lands to the Pearl River Improvement & Navigation Company or any one else.

Defendant further avers that the complainants and their predecessors in title have known for more than forty years that the title under which they claim is utterly and absolutely void and that they have no title to said land, and during all of said years they have made no assertion of their claim of title in anyway. And they well know they could not secure a decree in any Court of the State of Mississippi upholding the validity of their claim of title, and cancelling the title of defendant. Yet in defiance of the repeated decisions of the Supreme Court of the State of Mississippi that all titles of the kind under which they claim to own said land are utterly and totally void they are now attempting to assert said invalid title in this Court. And defendant avers that they filed said suit in this

Court in an effort to avoid the effect of the decisions of the Supreme [fol. 122] Court of the State of Mississippi and in hope this Court would refuse to follow the decisions of the Supreme Court of the State of Mississippi, which Court, above all others has the right to construe the statutes of its own state.

Defendant further avers that the matter, or land, in controversy, exclusive of interest and costs, does not exceed the sum of \$3,000.00 but the value of said land is much less than \$3,000.00, and this Court should refuse to take jurisdiction of this cause.

And now having fully answered all of the allegations of the bill of complaint filed herein against him, or so much and such parts thereof as he is advised that it is material or necessary for him to make answer to, defendant prays that he may be dismissed with his reasonable costs, etc.

George Lawrence, Defendant. Hathorn & Williams, Solicitors for Defendant.

Jurat showing the foregoing was duly sworn to by E. B. Williams omitted in printing.

[fol. 123] IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION AND ORDER CONSOLIDATING CASES

By agreement of the parties in open Court, in this case and the three companion cases with this case styled and numbered on the Equity Docket of this Court as follows: No. 222, Edward Hines Yellow Pine Trustees, vs. Francis C. Martin; No. 223, Edward Hines Yellow Pine Trustees vs. H. P. Lewis; No. 224, Edward Hines Yellow Pine Trustees vs. George Lawrence, the said three companion cases styled and numbered above are consolidated with this case, to be tried together on the bills of complaint and answers in each case, and [fol. 124] the agreed statement of facts and documentary evidence introduced and in evidence under said agreed statement of facts, which said cases shall be tried together as one case and one decree only entered which shall be the final decree of this Court in all four cases.

Ordered, adjudged and decreed in open Court by consent of the parties in the above styled and numbered cases on this 13th day of June, A. D. 1923.

E. R. Holmes, District Judge.

IN UNITED STATES DISTRICT COURT

[Title omitted]

AGREED STATEMENT OF FACTS

It is agreed by and between the parties hereto;

(1) That the State of Mississippi acquired title to the lands involved in this suit under the Act of Congress approved September 28, 1850, commonly called the "Swamp Land Act" and that said lands were duly listed or patented to the state by the United States and were owned by the state at the time of the enactment of Chapter 34 laws of the Mississippi Legislature of 1852, approved March 12, 1852; and also;

(2) That whatever title, if any, to said lands was vested in the Pearl River Improvement & Navigation Company by the patent [fol. 125] offered in evidence by complainants in this cause passed to and is now claimed by the complainants in this cause by virtue of *means* conveyances from Pearl River Improvement & Navigation Company to the complainants, and that the introduction of evidence by complainants of a chain of title connecting said complainants with the title, if any, that — vested in Pearl River Improvement & Navigation Company under said patent is hereby waived, and further that the complainants in this suit acquired their deed to said lands from the remote vendees and successors in claim of title to said Pearl River improvement & Navigation Company on the 1st, day of January, A. D. 1918; and also:

(3) That whatever title, if any, to said lands was vested in Mose Mitchell by the patent offered in evidence by the defendant in this cause passed to and is now claimed by the defendant in this cause by virtue of mesne conveyances from said Mose Mitchell to the defendant, and that the introduction of evidence by defendant of a chain of title connecting said defendant with the title, if any, vested in Mose Mitchell under said patent is hereby waived, and further that the defendants in this suit and in the three companion suits hereinbelow referred to acquired these deeds to the lands, involved in each case from the remote vendees and successors in claim of title to said Mose Mitchell on the respective dates as shown by the answers of each defendant in this and said companion cases;

(4) That neither of the parties to this suit knows who paid the taxes on said lands prior to the year 1890; but that the defendant's predecessors in claim of title paid the taxes on said lands for the [fol. 126] fiscal year 1892 under receipt No. 654 and for the fiscal year 1903 under receipt No. 387 and for the fiscal year 1905 under receipt No. 160, the payment of which taxes for the fiscal year 1905 by defendant's predecessors in claim of title was made on the 23 day of Nov. 1905, and it is agreed that on Dec. 20, 1905, complainants' predecessors in claim of title also paid the taxes on said lands under receipt No. 435; and it is further agreed that as to each year from and

including the year 1890 up to and including the year 1922, with the exception of said years 1892 and 1903 and 1905, the taxes on said lands were paid by the complainants and their predecessors in claim of title; alone and also:

(5) That the complainants were at the time of the commencement of this suit and now are citizens and residents of the State of Illinois, and the defendant was at the time of the commencement of this suit and now a citizen and resident of the State of Mississippi; and further that said lands were at the time of the commencement of this suit and now are, exclusive of interest and costs, worth more than \$3,000.00 and also:

(6) That the lands involved in this suit were located in Marion County from the time the state acquired title thereto until 1890 when Pearl River County was created out of portions of Marion and Hancock counties, since which time said lands have been located in Pearl River County; that Pearl River constitutes the Western boundary line of Pearl River County, and the range line dividing ranges 13 and 14 West of St. Stephens Meridian in Mississippi constitutes the Eastern boundary line — Pearl River County, and that [fol. 127] said two respective boundary lines were, until the creation of said Pearl River County, respectively the western and the eastern boundary lines of that portion of Marion County which was incorporated into Pearl River County when that county was created; and that the lands involved in this suit are located about six miles west of the said eastern boundary line of Pearl River County and about twenty miles east of the said Pearl River; and also:

(7) That the lands involved in this suit are located on Wolf River on the eastern side of said river, and lies east of the range of hills that divides the watershed of Wolf River from the watershed of Pearl River; that said lands are located about 20 miles east of Pearl River, and are located about 35 miles southwest of Leaf River, and lie southwest of the range of hills dividing the watershed of Leaf River from that of Pearl River; that Wolf river is a small stream as compared with Pearl River and Leaf River, and rises in the northern part of Pearl River County, near the line, about 12 miles east of Pearl River, and empties into the Bay of St. Louis, in Harrison County about 20 miles east of the mouth of Pearl River, and runs almost parallel with said Pearl River, that there is a dividing ridge or range of hills dividing the water-shed of Wolf River from that of Pearl River from the source of said Wolf River to its mouth; that said Wolf River intervenes between Pearl River and Leaf River and between the water-sheds of said two rivers: and southwest of the main dividing ridge dividing the watershed of Pearl River from that of Leaf River and east of the main dividing ridge dividing the watershed of Pearl River from that of Wolf River. that said Wolf River has an independent and separate watershed [fol. 128] of its own, independent and separate from that of Pearl River and of Leaf River, and that the lands involved in this suit are in this Wolf River watershed, are not—in the Pearl River

water-shed, and are not affected, directly or indirectly, by the waters of Pearl River, but are affected only by the waters of Wolf River;

(8) It is further agreed that a greater portion of the lands lying within a mile of Pearl River south of the 31st parallel in Pearl River County and Hancock County had been granted to individuals prior to the Act of Congress of September 28, 1850; but that there was granted to the State of Mississippi, under said Act of Congress, 55,125.18 acres of swamp and overflowed lands in ranges 16 and 17 and 18 in said Pearl River County, lying wholly within the Pearl River watershed and south of the 31st parallel; and it is not known to the parties in this suit how many acres of such lands in what is now Hancock County and lying within the Pearl River watershed were granted to the State of Mississippi by said Act of Congress; and also;

(9) That no patents were issued for swamp lands in Marion or Hancock counties lying south of the 31st parallel the date of the enactment of Chapter 34 Laws of 1852 and the Act of the Legislature of Mississippi approved April 8, 1871, creating the Pearl River Improvement & Navigation Company and making it the Board of Commissioners of the Southern District of Pearl River created by said Chapter 34 Laws of 1852, except on certificates issued by the Treasurer of said Board of Commissioners; that certificates of purchase for several thousand acres of lands situated similarly to the lands involved in this suit were issued by said Board of Commissioners prior [fol. 129] to the creation of said Pearl River Improvement & Navigation Company by the Act of April 8, 1871, and patents were issued to said Pearl River Improvement & Navigation Company under the assumed authority of said Act of April 8, 1871, to several thousand acres of lands situated similarly to the lands involved in this suit; but there were many thousands of acres of lands situated similarly to the lands involved in this suit in said counties south of the 31st parallel for which the said Board of Commissioners never issued certificates of purchase, and also which were never patented to said Pearl River Improvement & Navigation Company, but which were sold by the state and patents therefor were issued by the state under the general law, and amendments thereto, for the disposal of the swamp lands enacted in 1877; and also that all lands in said counties south of the 31st parallel which were patented to the Pearl River Improvement & Navigation Company under said Act of April 8, 1871, creating said Pearl River Improvement & Navigation Company, were afterwards held by the State of Mississippi and patented to divers persons under the said general laws providing for the disposal of the swamp lands;

(10) It is further agreed that an uncertified copy of the map of Pearl River County may be introduced in evidence and considered a part of the record in this case without objection raised by the pleadings as to the location of the lands involved in this suit; and also that a copy of the patent, certified to, from the state of Mississippi to Pearl River Improvement & Navigation Company, through which

complainants claim title to the lands involved in this suit, and also a copy of the patent, certified to, from the state of Mississippi to [fol. 130] Mose Mitchell, through which defendant claims title to the lands involved in — may be introduced in evidence and considered as parts of the record in this case, subject to objection for incompetency or irrelevancy; but no objection will be made on account of the failure of the certified copy of the patent to Pearl River Improvement & Navigation Company to embrace therein any lands contained in the record of said patent which are not involved in this suit and the three companion suits hereinbelow referred to.

(11) It is further agreed that the patent to Pearl River Improvement & Navigation Company offered in evidence by complainants in this case is the same patent which was involved in the case of Southern Pine Company vs. Hall, reported in 105 Fed. Rep. page 84, and the case of Becker vs. Columbia Bank, reported in 73 Sou. Rep. page 798, but that the lands involved in this and three companion suits hereinbelow referred to were not involved in either of said suits:

(12) It is further agreed that there is not on file in the office of the Secretary of State of the State of Mississippi, or in the office of any other officer of said State, either any bond or any evidence of the filing of any bond required by the Act of April 8, 1871, creating the Pearl River Improvement & Navigation Company; but it is agreed that there was at one time on file in the office of the Secretarys State a bond purporting to be the bond required by said Act of April 8, 1871, which is the same bond referred to and set out *per has verba* in the cases of Hardy vs. Hartman, reported in 65 Miss. at page 505, and in Southern Pine Co. vs. Hall, *supra*, and also referred to in Becker vs. Columbia Bank, *supra*.

[fol. 131] (13) It is further agreed that every issue of law and of fact will be settled by the trial of this case which are involved in the three companion cases numbered 227 and 223 and 224 on the Equity Docket of this Court, except such difference in law and facts as may arise out of the difference in the dates on which each defendant acquired his deed to the land involved in each separate suit both in this Court and in any appellate Court to which this or either of said companion cases may be appealed, and that a decree shall be entered in the three companion suits upon this agreed statement of facts, the same to conform to any difference in law and fact arising out of the difference in the dates each defendant acquires his deed and such decrees to be entered at the same time of the entry of the decree in this case; and that if either party is aggrieved at the decree entered in any of said cases and desires to prosecute and appeal therefrom he may prosecute same on bill and answer therein and this agreed statement of facts and the documentary evidence offered under this agreed statement of facts.

(14) It is further agreed that this agreement of facts, and the documentary evidence herein provided to be introduced, together with the pleadings in each cause, shall constitute the record upon

which this and said three companion cases are to be tried, and that the same shall be tried without a stenographer and that it will not be necessary to take a bill of exceptions for the purpose of getting the said documentary evidence and this agreed statement of facts incorporated into the record in said cases for this Court or upon any appellate Court; this agreement, both as to the said documentary evidence and all other things covered by this agreement is made for the convenience of the parties and in order to conserve [fol. 132] the time of the Court; and this agreement and the documentary evidence herein referred to, with the consent of the Court given in open Court, is hereby made a part of the record in this and said companion cases.

T. J. Wills, T. W. Davis, W. L. Wallace, Attorney- for Complainants. Hathorn & Williams, Attorney- for Defendant.

EXHIBIT TO AGREED STATEMENT OF FACTS

Patent

The State of Mississippi

to

Pearl River Navigation & Improvement Co.

THE STATE OF MISSISSIPPI,
Marion County:

To whom these presents shall concern, Greeting:

Whereas by an Act of Congress approved September 28th, 1950, certain lands situated in the state of Mississippi were granted to said state and whereas subsequent to said 28th day of September, 1950, the land- hereinafter described were patented to the state of Mississippi in pursuance to said Act and whereas the Legislature of the State of Mississippi passed an act to incorporate the Pearl River Improvement and Navigation Company and for other purposes said act having become a law by operation of the constitution thereof on the 8th day of April, 1871, and whereas the following described tracts or parcels of land inure to said Company by virtue of said Act [fol. 133] described as follows, to-wit: Lots No. four (4) and five (5) in Section One (1) together with other lands, and South half of North West quarter & East Half of South East Quarter, Section thirty-six (36) all in Township 2 South Range Fifteen (15) West. (Here follows the description of other lands.) Now know ye, that the state of Miss., in consideration of the premises and in compliance of said Act of the Legislature in this case ordered and provided for hath given and granted and by these presents doth give and grant unto the said Pearl River Improvement and Navigation Company and to their successors and assigns the said tracts of land hereinafter described to have and to hold the same together with all

the rights, privileges, immunities and appurtenances thereto belonging unto the said Pearl River Improvement and Navigation Company and to their successors and assigns forever.

In testimony whereof I, J. L. Alcorn, Governor of the state aforesaid, hath caused these letters to be made patent and the great seal of the state to be thereto affixed.

Given under my hand and seal at the City of Jackson, the 27th day of June, 1871, in the year of our Lord One Thousand Eight Hundred and Seventy One.

J. L. Alcorn, Governor. James Lynch, Sect. of State.

Filed for record March 24th, 1873. John Applewhite, Clerk.

Duly recorded March 24th, 1873. John Applewhite, Clerk.

[fol. 134] THE STATE OF MISSISSIPPI,
Marion County, First District:

I, C. G. Mayson, Clerk of the Chancery Court in and for said County and State, hereby certify that the foregoing pages, beginning at line No. 36, on page 204, and ending at line No. 15 on page 215 is a true, correct copy of the record of a certain deed of conveyance as the same appears on record on pages 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, and 428 in book "G" of the records of deeds in my office at Columbia in said county and state.

Given under my hand and official seal at Columbia in said county and state, this January 17th, 1898.

C. G. Mayson, Clerk, by J. T. Bennett, D. C.

Clerk's Certificate

STATE OF MISSISSIPPI,
Pearl River County:

I, H. K. Rouse, Clerk of the Chancery Court in and for said county and state, hereby certify that the foregoing pages contain a true and complete copy of a patent from the State of Mississippi to the Pearl River Improvement and Navigation Company, in so far as it relates to the S. $\frac{1}{2}$ of N. W. $\frac{1}{4}$ and E. $\frac{1}{2}$ of S. E. $\frac{1}{4}$ of Section 36, Township 2 South, Range 15 West, as the same appears of record in my office in Land Deed Record No. 4 on page 204 to 215, both inclusive and forming a part of the transcribed records of Marion County Mississippi.

Given under my hand and seal of office, this the 9th day of June, 1923.

H. K. Rouse, Chancery Clerk.

[fol. 135] EXHIBIT TO AGREED STATEMENT OF FACTS

No. 2368

Swamp Land Patent

State of Mississippi to all to who- these presentes shall come, Greeting:

Whereas, by an Act of the Legislature of the State of Mississippi, approved February 1st, 1877, entitled "An Act to revive, amend and consolidate the various acts relative to the swamp lands donated to the state under Act of Congress dated 28th of September, 1850, and whereas, the commissioner having reported that to Mose Mitchell purchased the following described lands in the County of Marion, to-wit: S. $\frac{1}{2}$ of N. W. $\frac{1}{4}$ and E. $\frac{1}{2}$ of S. W. $\frac{1}{4}$ Section 36, T. 2. S. R. 15 W. and S. $\frac{1}{2}$ of N. W. $\frac{1}{4}$ Section No. 9 Township 1 S. Range 16 West, containing Two Hundred & thirty seven & $\frac{24}{100}$ acres, at Twenty five (25) cents per acre, amounting to the sum of (\$59.32) Fifty Nine & $\frac{32}{100}$ Dollars.

Now know ye, that the State of Mississippi in consideration of the premises, and in conformity with said act of the Legislature in such case made and provided, hath given and granted and by these presents doth give and grant unto the said Mose Mitchell, and to his heirs and assigns, the said tract of land above described to have and to hold same together with all the rights, privileges, immunities and appurtenances thereunto belonging unto the said Mose Mitchell and to his heirs and assigns forever.

In witness whereof, I Robert Lowery, Governor of the state aforesaid, have caused these letters to be made patent, and the Great Seal of the state to be hereunto affixed.

[fol. 136] Given under my hand at the city of Jackson the 7th day of December in the year of our Lord, One Thousand, Eight Hundred and Eighty three.

By the Governor.

Robert Lowery. Henry C. Myers, Secretary of State.

Filed for record at 7 o'clock A. M. May 28th, 1885. A. G. Webb, Clerk.

Recorded May 28th, 1885. A. G. Webb, Clerk.

THE STATE OF MISSISSIPPI,
Marion County, First Dist.:

I, C. G. Mason, Clerk of the Chancery Court in and for said county and state, hereby certify that the foregoing pages beginning at line No. 1 on page 166 and ending at line No. 40 on page 166, is a true, correct and complete copy of a certain Deed of Conveyance as the same appears of record on pages 257 & 258, Book K, Record of Deeds in my office at Columbia, in said county and state.

Given under my hand and official seal of office at Columbia in said county and state, this 2nd, day of February, 1898.

C. G. Mayson, Clerk, by J. T. Bennett, D. C.

[fol. 137] STATE OF MISSISSIPPI,
Pearl River County:

I, H. K. Rouse, Clerk of the Chancery Court of Pearl River County, Mississippi, and having in my custody as such official the Land Deed Records of Pearl River County, Mississippi, do hereby certify that the foregoing is a true and correct copy of the patent from the State of Mississippi to Mose Mitchell, as the same appears of record in Book 5 page 166 of the Land Deed Records of Pearl River County, Mississippi, now on file in my office.

Witness my signature and official seal this the 9th day of June, 1923.

H. K. Rouse, Chancery Clerk.

Defendants were to furnish blue print copy of map having order to withdraw original in evidence, which I have; but the print has not yet arrived.

Geo. P. Money, D. C., Biloxi.

[fol. 138] IN UNITED STATES DISTRICT COURT

[Title omitted]

JUDGMENT—Filed June 13, 1923

This day there came on to be heard before the Court, upon agreement entered in open Court by the parties to the four above styled and numbered causes that the same should be consolidated and tried together and that one decree should be entered herein making final disposition of said four consolidated causes, the above numbered and styled four consolidated causes, the same having come on to be heard upon the bill and answer in each case, the agreed statement of facts this day filed in said causes, and the documentary evidence referred to in said agreed statement of facts, viz: the patent from the state of Mississippi to Pearl River Improvement & Navigation Company offered in evidence by complainant and filed this day by the Clerk [fol. 139] of this Court, and the patent from the State of Mississippi to Mose Mitchell offered in evidence by the defendants in each case and also the map of Pearl River County offered in evidence by the defendant in each case and both filed this day by the Clerk of this Court; and the Court having heard and considered the same, and having heard and considered the arguments of counsel; is of the opinion that the complainants are not vested with the title to the lands described in either of said suits, but that the defendant named in each suit is vested with title to the lands described in such suit,

and that complainants are not entitled to the relief prayed for in either of said suits;

It is, therefore, ordered, adjudged and decreed that the complainants are not the owners of the lands involved in said cause No. 221 and therein described as N. E. $\frac{1}{4}$ of S. E. $\frac{1}{4}$ of Section 36 in Township 2 South, Range 15 West, but that the defendant in said cause, Anna F. C. Martin, is the owner thereof; and further that the complainants are not the owners of the lands involved in said cause No. 222 and therein described as S. E. $\frac{1}{4}$ of S. E. $\frac{1}{4}$ of Section 36 in Township 2 South, Range 15 west, but that the defendant in said cause, Francis C. Martin, is the owner thereof; and further that the complainants are not the owners of the lands involved in said cause No. 223 and therein described as S. W. $\frac{1}{4}$ of N. W. $\frac{1}{4}$ of Section 36 in Township 2 South, Range 15 West, but that the defendant in said cause, H. P. Lewis, is the owner thereof; and further that the complainants are not the owners of the lands involved in said cause No. 224 and therein described as S. E. $\frac{1}{4}$ of Section 36 in Township 2 South, Range 15 West, but that the defendant in said cause, George Lawrence, is the owner thereof;

It is further ordered that the said complainants be and they are [fol. 140] hereby denied the relief prayed for in each of said causes, and that said causes and each of them be and the same are hereby dismissed at the cost, in each case, of the said complainants for all of which let proper process issue, to which action of the Court complainants then and there excepted.

Ordered, adjudged and decreed this June 13th, A. D. 1923.

E. R. Holmes, District Judge.

IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR APPEAL

To the Honorable Edwin R. Holmes, District Judge for the Southern Division of the Southern District of the State of Mississippi:

Come the Edward Hine Yellow Pine Trustees, complainants in the consolidated causes herein, and show unto the Court that they [fol. 141] feel aggrieved at the order and decree made and entered in the District Court of the United States for the Southern Division of the Southern District of Mississippi, in the above entitled, consolidated causes on the 13th day of June, 1923, wherein it was adjudged that the complainants were not entitled to the relief sought in the bill of complaint as contained in the prayer for the relief therein, and ordered that said bill of complaint should be dismissed; and hereby pray an appeal to the United States Circuit Court of Appeals for the Fifth Circuit from said decree, for the reasons set forth in the assignment of error filed herewith. They further pray

the Court that said appeal may be granted with a supersedeas to the said decree, and that the Court may fix the amount of the bond to be given, necessary to perfect said appeal.

Davis & Wallace, T. J. Wills, Attorney for Complainants.

[fol. 142]

IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER ALLOWING APPEAL

On the motion of T. J. Wills, Esquire, Solicitor for Complainants, it is hereby ordered that an appeal to the Circuit Court of Appeals for the Fifth Circuit from the decrees heretofore filed and entered in the foregoing consolidated causes, be and the same is hereby allowed, and that a certified copy of the record, evidence, and all other proceedings be forthwith transmitted to the Circuit Court of Appeals. It is ordered that the bond on this appeal be fixed at \$500.00 and upon the execution and approval of said bond the same shall operate as a supersedeas in said causes.

Ordered and decreed on this, the 19th day of June, 1923.

E. R. Holmes, District Judge.

[fols. 143 & 144] BOND ON APPEAL FOR \$500—Approved and filed;
omitted in printing

[fol. 145]

IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENT OF ERRORS

Come the complainants, the Edward Hines Yellow Pine Trustees, by their solicitors, and assigns the following errors upon which they will rely for the prosecution of an appeal in this cause, from a decree made and entered in this Court on the 13th day of June, 1923.

First. The District Court erred in denying the relief prayed for by complainants and in dismissing the bills of complaint.

Second. The District Court erred in holding that the defendant named in each suit is vested with the title to the lands described in said suits.

Third. The District erred in overruling the decision of the Circuit Court of Appeals, in the case of the Southern Pine Company vs. [fol. 146] Hall, reported in 105 Federal Reporter, P. 84.

Fourth. The District Court erred in holding that it was bound by the decisions of the Supreme Court of the State of Mississippi, and in following said decisions to the extent of overruling the said case of the Southern Pine Company vs. Hall, *supra*, and the opinion of the Supreme Court of the United States, dismissing the writ of error in said cause.

Fifth. The District Court erred in refusing to follow the decision of Southern Pine Company vs. Hall, *supra*, holding that the patent from the State of Mississippi to the Pearl River Improvement and Navigation Company was a valid patent, which same patent was in issue in this case, and which decision in the Southern Pine Company vs. Hall, had become a rule of property, and *by* which decree of the Court entered in this cause holding said patent void *is* in violation of the rights of complainants in holding the land conveyed in said patents as a rule of property, under which the said complainants acquired a title to said lands.

Wherefore, the said complainants herein pray that the said decree be reversed, vacated and set aside, and the said cause be remanded, with direction to the District Court to grant complainants the relief sought in the bills of complaint, and prayed for in the prayer thereto.

Davis & Wallace, T. J. Wills, Attorneys for Complainants.

[fol. 147] IN UNITED STATES DISTRICT COURT

[Title omitted]

NOTICE OF APPEAL

To F. C. Hathorn, Esq., and E. B. Williams, Esq.:

This is to advise you that we have this day filed in the office of the Clerk of the District Court of the United States for the Southern Division of the Southern District of the State of Mississippi out [our] perfected appeal and bond as approved by the District Judge of this Court, together with the assignment of errors and *præcipe*, a true copy of which is herewith transmitted to you by registered mail.

Davis & Wallace, T. J. Wills, Attorneys for Complainants.

I, T. J. Wills, one of the solicitors for the complainants in the foregoing cause, certify that I have this day mailed to F. C. Hathorn [fol. 148] and E. B. Williams, solicitors of record for defendants, a true and correct copy of the assignment of error and *præcipe* and order of the District Judge in this said cause.

T. J. Wills, Attorney for Complainants.

IN UNITED STATES DISTRICT COURT

[Title omitted]

PRECIPE FOR TRANSCRIPT OF RECORD

To the Clerk of the District Court in and for the Southern Division of the Southern District of Mississippi:

You will please include in your transcript of the record on appeal in the foregoing cause the following, to-wit:

[fol. 149] First. Complainants' bill of complaint in each of the four consolidated suits, Nos. 221, 222, 223, and 224 on the Equity Docket.

Second. The answer of the defendants filed in each of said four causes.

Third. The decree of the Court, consolidating the four causes.

Fourth. The agreed statement of facts introduced in evidence, and the copy of the patent introduced by complainants and copy of the patent introduced by defendants, and the map of Pearl River County introduced by defendants.

Fifth. The decree of the Court denying the relief prayed for and dismissing the bills of complaint.

Sixth. The petition of the complainants for an appeal with supersedeas from the decree of the Court denying the relief and dismissing the bills.

Seventh. The order of the Court allowing an appeal with supersedeas.

Eighth. Bond filed by complainants for an appeal in accordance with the order of the Court allowing said appeal.

Ninth. Citation to the defendants with waiver thereon.

Tenth. Assignment of error with prayer for reversal of the decree of the Court, denying the relief and dismissing the bills of complaint.

[fol. 150] Eleventh. Notice to defendants of appeal.

Twelfth. The certificate of the Clerk authenticating the transcript of the record on appeal.

Thirteenth. The præcipe filed herein.

Davis & Wallace, T. J. Wills, Attorneys for Complainants.

IN UNITED STATES DISTRICT COURT

CLERK'S CERTIFICATE.

UNITED STATES OF AMERICA,
Southern District of Mississippi:

I, Jack Thompson, Clerk of the District Court of the United States for the Southern District of Mississippi do hereby certify that the foregoing is a true and correct transcript of the records in the foregoing cases as the same appears of record in my office at Biloxi, Miss.

Witness my hand and seal of said Court hereunto affixed at Jackson in said District this July 12, 1923.

Jack Thompson, Clerk. (Seal.)

[fol. 151] CAPTION—Omitted

[fol. 151a] UNITED STATES CIRCUIT COURT OF APPEALS

No. 4181

Extract from the Minutes of January 8th, 1924

EDWARD HINES YELLOW PINE TRUSTEES

VERSUS

ANNA F. C. MARTIN et als.

ARGUMENT AND SUBMISSION

On this day this cause was called, and, after argument by T. J. Wills, Esq., for appellant, and F. C. Hathorn, Esq., for appellees, was submitted to the Court.

[fol. 152] IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

OPINION OF THE COURT FILED—January 16th, 1924

Appeal from the District Court of the United States for the Southern District of Mississippi

T. J. Wills and W. S. Wallace, (Wallace & Davis on the brief),
for Appellants.

F. C. Hathorn, (Hathorn & Williams on the brief) for Appellees.

Before Walker and Bryan, Circuit Judges, and Call, District Judge.

CALL, District Judge:

The appellants as complainants below filed four bills separately on the chancery side of the Court against the individual defendants, describing pieces of property as follows: Anna F. C. Martin, the N. E. $\frac{1}{4}$ of S. E. $\frac{1}{4}$; F. C. Martin, S. E. $\frac{1}{4}$ of S. E. $\frac{1}{4}$; H. P. Lewis, S. W. $\frac{1}{4}$ of N. W. $\frac{1}{4}$; and George Lawrence, S. E. $\frac{1}{4}$ of N. W. $\frac{1}{4}$ all in Section 36, Twp. 2, South, of Range 15 West; praying in each bill to have the Court decree title in them and remove any claim of the defendant as a cloud upon their title. Each defendant answered the bill denying complainants' title on various grounds and alleging title in himself or herself.

[fol. 153] These suits were subsequently consolidated and tried before the District Judge as one suit, upon the agreed statement of facts and documentary evidence, and a decree rendered whereby it was adjudged that the title to the lands was vested in the defendants and the prayers of the bills denied.

The agreed statement of facts among other things stipulated that the lands in question were acquired by the State of Mississippi from the United States by Act of Congress approved September 28th 1850; that whatever title complainants have depends upon the patent issued to the Pearl River Improvement & Navigation Company, by the State of Mississippi, June 27th, 1871, and vested in the complainants by mesne conveyances, the production of which is waived; the complainants acquired their title January 1st 1918; That whatever title defendants have was acquired through the patent issued by the State of Mississippi, December 7th 1883, to Mose Mitchell, through mesne conveyances, the production of which is waived.

That the taxes on the land were paid by the predecessors in title of the defendants for the years 1892, 1903 and 1905; that the complainants or their predecessors in title paid the taxes for the remaining years from 1890 to 1922 inclusive, and that the parties do not know who paid such taxes prior to 1890.

It is further admitted that the patent to the Pearl River Improvement and Navigation Company, under which complainants claim is the same patent involved in the cases of Southern Pine Co., vs. Hall, 105 Fed. 84, and Becker vs. Columbia Bank, 73 So. 798, [fol. 154] but these particular lands were not involved in those suits; that there was a bond filed in the office of the Secretary of State purporting to be the bond required by the Act of April 8th 1871 of the Legislature of the State of Mississippi, which bond is set out in words in the cases of Hardy vs. Hartman, 65 Miss. 505; Southern Pine Co. vs. Hall, and Becker vs. Columbia Bank, *supra*.

Pursuant to this agreed statement of facts, a copy of the patent to the Pearl River Improvement & Navigation Company and a copy of the patent to Mose Mitchell were introduced and filed in evidence.

The District Judge in the trial and disposition of the cases followed the decisions of the Supreme Court of Mississippi in the construction of the Act of the Mississippi Legislature of 1871, rather than the decision of the Circuit Court of Appeals in the *Southern Pine Co. vs. Hall*, *supra*.

In the case of *Hardy vs. Hartman*, 65 Miss. 505, the Supreme Court of Mississippi in 1888 decided that the giving the bond required by Section 5 of the Act of 1871 incorporating the Pearl River Improvement & Navigation Company, was a condition precedent to the issuance of the patent provided for in said Act; that this condition precedent had not been complied with before the patent, the basis of complainants' title, was issued to the Company and therefore such patent was void and did not divest the title of the State.

The bond referred to in the agreed statement of facts is set out in the statement of the above case, and is as follows:

[fol. 155]

"Bond

"Pearl River Improvement and Navigation Company

"Know all men by these presents, that we, Walter P. Billings, Samuel A. Vose, A. Warner, O. C. French, are held and firmly bound unto the State of Mississippi in the sum of fifty thousand dollars, the payment of which well and truly to be made, we bind ourselves, our heirs and executors, jointly and severally, by these presents. The condition of the above bond is such, that whereas by an Act of the Legislature of the State of Mississippi, entitled, 'An Act to incorporate the Pearl River Improvement and Navigation Company, and for other purposes,' a company was incorporated called the Pearl River Improvement & Navigation Company, which company is charged with certain duties and bound by certain conditions in said Act specified. Now, if said company will well and truly perform, or cause to be performed, all the acts and things mentioned in said act of incorporation, and comply with all the terms and conditions in accordance with the tenor and meaning of said act, then this bond to be void, otherwise to remain in full force and effect.

"In witness whereof said persons have hereunto set their hands and seals this 7th day of April, 1871.

W. P. Billings (Seal), (by S. A. Vose, His Attorney).
S. A. Vose. (Seal.) A. Warner. (Seal.) O. C. French.
(Seal.)

"Approved May 12th 1871. J. L. Alcorn, Governor."

The question of the validity of the Patent to the Pearl River Improvement and Navigation Company, was again before that Court in *Becker vs. Columbia Bank*, 73 So. 798, when the Court [fol. 156] again held the patent void and declared the former decision to be a rule of property in the State. Since the decision of this case, two other cases have been before the Supreme Court of Mississippi. In these cases the Court reversed the case awarding

damages to the State and affirmed the chancery decree dismissing the bill. On suggestion of error seeking to have the Court declare that the distinction drawn in that opinion between that case and *Tynes vs. Southern Pine Company*, unsound, they say "We are not concerned here with the correctness of the decision in *Hardy vs. Hartman* and the rule there applied, whether correct or not to titles derived through the patent issued to the Pearl River Improvement and Navigation Company, has become a rule of property and will not be departed from."

In the case of *Southern Pine Co. vs. Hall*, 105 Fed. 84, the Circuit Court of Appeals reached the conclusion that the bond was a compliance with the Statute and the patent issued to the Pearl River Improvement & Navigation Company was valid. The Supreme Court of the United States refused a certiorari in this case.

We have therefore the question whether the rule of title to real property as decided by the Supreme Court of the State of Mississippi should be applied in this case as was done by the District Judge. We think that is the proper rule, and that there is no error in the decree. There cannot be two contradictory rules of title to real property dependent upon the statutes of a state. The construction of such statutes by the highest court of the State is binding upon the Courts of the United States in cases not falling within some narrow exceptions.

[fol. 157] This rule of property has existed in the State of Mississippi since 1888, and being such it will be applied by this Court in deciding cases arising under the Statute.

As said by the Supreme Court in the case of *Jackson ex dem. St. John vs. Chew*, 12 Wheat. 161, "The inquiry is very much narrowed, by applying the rule which has uniformly governed this court, that where any principle of law, establishing a rule of real property, has been settled in the state courts, the same rule will be applied by this court, that would be applied by the state tribunals. This is a principle so obviously just, and so indispensably necessary, under our system of government, that it cannot be lost sight of."

The same rule was applied in the case of *James H. Suydam vs. Wm. H. Williamson*, 24 Howard 427, and recognized by many decisions of the Supreme Court following.

The decree of the District Court is affirmed.

[fol. 158] IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

JUDGMENT

Extract from the Minutes of January 16th, 1924

This cause came on to be heard on the transcript from the District Court of the United States for the Southern District of Mississippi, and was argued by counsel;

On consideration whereof, It is now here ordered, adjudged and decreed by this Court, that the decree of the said District Court in this cause, be, and the same is hereby, affirmed;

It is further ordered, adjudged and decreed that the appellant, Edward Hines Yellow Pine Trustees, and the sureties on the appeal bond herein, W. L. Wallace, T. W. Davis and T. J. Wills, be condemned, in solido, to pay the costs of this cause in this Court, for which execution may be issued out of the said District Court.

[fol. 159] IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

PETITION FOR REHEARING FILED—February 2nd, 1924

Come the appellants in the above styled cause and petition the court to grant them a new hearing in this cause for the reasons to be hereinafter set forth.

The record in this case shows on pages 2, 3 and 4 thereof, the deraignment of title by which complainants acquired the title to said lands. This deraignment of title sets out the book and page of land deed records where the deeds are recorded, and on P. 4, Sub-division "h," this language is used in the bill:

"Reference to the above instruments and the records in which the same are recorded are prayed to be taken and considered as exhibits to this bill as if the same were copied herein."

[fol. 160] In the agreed statement of facts this agreement is made:

"That whatever title, if any, to said lands was vested in the Pearl River Improvement and Navigation Company by the patent offered in evidence by complainants in this cause, passed to and is now claimed by the complainants in this cause by virtue of mesne conveyances from the Pearl River Improvement and Navigation Company to complainants, and that the introduction of evidence by complainants of a chain of title connecting said complainants with the title, if any, that vested in the Pearl River Improvement and Navigation Company under said patent, is hereby waived."

The allegations in the bill of complaint and the agreed statement of facts waiving the introduction of the deeds referred to in the said bill constituting complainants' chain of title, was a legal admission of the chain of title so pleaded by complainants.

By reference to the bill of complaint, it will be observed that it is charged and admitted to be a fact that November 20, 1872, the Pearl River Improvement and Navigation Company, for a valuable consideration, conveyed the lands to M. S. Baldwin; that on April 17, 1873, M. S. Baldwin, for a valuable consideration, conveyed the lands to Israel Hall; that on the 30th day of April, 1889,

Israel Hall died testate, leaving Olivia B. Hall as his sole devisee and legatee to whom the lands owned by him passed under the terms of said will. By reference to the case of the Southern Pine Company vs. Hall, 105 Federal P. 84, it will be observed that the conveyances herein set out are the identical conveyances in the chain of title under consideration by this court in that case. For a valuable consideration the title had passed to Baldwin, and subsequent [fol. 161] thereto, for a valuable consideration, the title had passed to Hall, prior to the opinion of the Supreme Court of Mississippi in Hardy vs. Hartman, 65 Miss. 505. The agreed statement of facts on P. 130 of the record, agrees that the patent in evidence is the same patent considered in the case of the Southern Pine Company vs. Hall, supra. The allegations of the bill show that it is the same chain of title considered in that case. While the lands here involved were not embraced in the Hall case, the record in this case shows that Olivia B. Hall was the owner of these lands under the same patent and by the same mesne conveyances as the lands under consideration by this court, in the Hall case, supra, and that she owned them at the time that case was decided.

We desire to call the court's attention further to the fact that Olivia B. Hall was thus vested with the title to the lands, under consideration herein, prior to the decision of the Supreme Court of Mississippi in Hardy vs. Hartman, supra.

We think that it is a principle of law so well-settled that this court will recognize it without the citation of authority upon which it rests, that if Olivia B. Hall's title to these lands was a good and valid title in her, then her subsequent conveyances would clothe purchasers in the chain of title, or by mesne conveyances under her with the same character of title held by her, to-wit, a good and valid title.

This court in affirming the decree of the District Court in this cause, may we respectfully suggest, overlooked the above fact and departed from the principles of law that control under such state of case as announced by the Supreme Court of the United States, and followed a different rule of law announced by that Court where the facts are quite different, which will be pointed out further infra this petition.

[fol. 162] In Hardy vs. Hartman, supra, the question of the statute was not before the court and not considered by it. The effect of that case is to hold the Act of 1871 constitutional, valid and binding. All that that case passed on was the construction of an instrument designated as a bond. The court's interpretation and classification of the instrument was not predicated upon any statutory provision but upon the state court's interpretation of instruments under the general and commercial law of the state. It held the instrument not to be a bond.

On matters of general and commercial law, the courts of the United States exercise an independent judgment and decide such questions for themselves.

Adelbert College vs. Wabash R. R. Co., 171 Fed. 805. In speak-

ing of the rule that the United States courts will follow the settled interpretation of the state court of the state statute the Court said:

"This rule obviously implies that the state decision which is to foreclose the independent judgment of the court of the United States must have been one based alone upon the statute construed, for, if extraneous conditions were involved, the judicial mind was not applied to the precise question, and the decision, though persuasive, has not the obligatory effect of a clear case of statutory construction.

"*Venice vs. Murdock*, 92 U. S. 494.

"*Tulare Irrigation District vs. Shepard*, 185 U. S. 1.

"*Roberts vs. Bolles*, 101 U. S. 119. Etc."

When the case of *Southern Pine Company vs. Hall*, *supra*, came before this court for consideration, this court recognized the fact that *Hardy vs. Hartman* had not construed a statute but rather was [fol. 163] an interpretation of an instrument under the general and commercial law and exercised an independent judgment in its interpretation of that instrument. The court used this language:

"This case, we think, cannot be held a judicial construction of the statute on the point here involved."

By the exercise of an independent judgment in the construction of an instrument under the general and commercial law under the authority laid down by the Supreme Court of the United States this court construed the bond under consideration to be a good and valid bond, and that patent issued thereon valid and passing the title. This was not an independent construction of a statute by the United States court, it was the exercise of the court's independent judgment in the construction of an instrument under the general and commercial law under those powers given to it as a court of concurrent jurisdiction. Such powers must be recognized and asserted by the United States courts in order that they may maintain their co-ordinate jurisdiction.

By the case of the *Southern Pine Company vs. Hall*, this court established as a rule of property the validity of the title to the lands of Olivia B. Hall held under the Pearl River Improvement and Navigation Company patent embraced in that litigation. This court did more than that. It established as a rule of property that the Pearl River Improvement and Navigation Company patent was a valid and binding patent, and titles held thereunder by Olivia B. Hall to lands at the time of that decision by the same chain of title, though not embraced in the litigation, to be a good and valid title.

Upon the faith and credit accorded the United States courts in the exercise of their independent judgment on matters of general and commercial law, as expressed in the *Hall* case, Olivia B. Hall [fol. 164] sold these lands and the purchasers thereof purchased, and by mesne conveyances these complainants acquired the title thereto. Complainants were citizens of Illinois. They gave full faith and credit to the opinion of this court in the *Hall* case; they relied upon

the integrity of this court as a court of co-ordinate and not subordinate jurisdiction. In now overruling the Hall case, the court has deprived complainants of their property acquired under the faith and credit of its independent judgment in passing upon a matter over which it has co-ordinate powers and full jurisdiction.

Where the court has deliberately decided a contract to be valid and property rights have accrued under the faith of that ruling, it will decline to reverse its decisions though subsequent thereto, the highest court of the state decided that the contract is invalid.

Rowan and Harris vs. Runnels, 5 How. 134.

The court said in the above case:

"Acting under the opinion thus deliberately given by this court, we can hardly be required by any comity or respect for the state courts to surrender our judgment to decisions since made in the state and declare contracts to be void, which upon full consideration we have pronounced to be valid."

Hardy vs. Hartman was considered by this court in the Hall case. This court refused to recognize it as a rule of property. It was not a construction of the state statutes or state constitution. This court, in the Hall case, exercised its independent judgment. The question naturally arises: How long did that independent judgment expressed by this court remain the law? When did that independent judgment meet the twilight zone and the independency of this court submerge into dependency upon the State Court?

[fol. 165] An examination of the opinion of the court in this case will show that it is correct were the question before this court for the first time in this case. Where the court had previously considered the question and exercised its independent judgment and by the exercise of that independent judgment established a rule of property upon the faith and credit of which property rights have vested, a different rule of law applies from the one controlling the decision in this case. The true rule is found in the case of Rowan and Harris vs. Runnels, supra. See to the same effect

Adelbert College vs. Wabash R. R. Co., supra.

Anderson vs. Santa Anna, 116 U. S. 356.

Carroll County vs. Smith, 111 U. S. 556.

Loeb vs. Trustees, 179 U. S. 492.

The cases on this point are too numerous to cite here.

We respectfully submit to the court that in deciding this case the court has applied the wrong rule of law and principle governing its decisions. Wherefore, for the reasons herein set forth, the appellants and petitioners here, respectfully pray this Honorable Court to grant them a rehearing of said cause.

Davis & Wallace, T. J. Wills, Attorneys for Appellants.

I, T. J. Wills, one of the attorneys for appellants herein, do hereby certify that in my judgment the foregoing petition for a rehearing is well-founded; and that the same is not interposed for delay.

T. J. Wills, Attorney for Appellants.

[fol. 166] IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

Extracts from the Minutes of February 20th, 1924

ORDER OVERRULING PETITION FOR REHEARING

It is ordered by the Court that the petition for re-hearing, filed in this cause, be, and the same is hereby, denied.

[fol. 167] IN UNITED STATES CIRCUIT COURT OF APPEALS

CLERK'S CERTIFICATE

I, Frank H. Mortimer, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the pages numbered from 151 to 166 next preceding this certificate contain full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion of the United States Circuit Court of Appeals for the Fifth Circuit, in a certain cause in said Court, numbered 4181, wherein Edward Hines Yellow Pine Trustees is appellant, and Anna F. C. Martin, et als., are appellees, as full, true and complete as the originals of the same now remain in my office.

I further certify that the pages of the printed record numbered from 1 to 150 are identical with the printed record upon which said cause was heard and decided in the said Circuit Court of Appeals.

In testimony whereof I hereunto subscribe my name and affix the seal of the said Circuit Court of Appeals, at my office in the City of New Orleans, Louisiana, in the Fifth Circuit, this 14th day of April, A. D. 1924.

Frank H. Mortimer, Clerk of the United States Circuit Court of Appeals, Fifth Circuit. (Seal of United States Circuit Court of Appeals, Fifth Circuit.)

[fol. 168] IN SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1923

No. 971

On Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit

ORDER GRANTING PETITION FOR CERTIORARI—Filed May 12, 1924

On consideration of the petition for a writ of certiorari herein to the United States Circuit Court of Appeals for the Fifth Circuit, and of the argument of counsel thereupon had,

It is now here ordered by this Court that the said petition be, and the same is hereby, granted, the record already on file as an exhibit to the petition to stand as a return to the writ.

1870-1871

1871-1872

1872-1873

1873-1874

1874-1875

1875-1876

1876-1877

1877-1878

1878-1879

Office Supreme Court, U. S.

FILED

APR 19 1924

WM. R. STANSBURY

CLERK

No. **363**

**IN THE
SUPREME COURT OF THE
UNITED STATES OF AMERICA**

EDWARD HINES YELLOW PINE TRUSTEES,

Petitioners,

vs.

ANNA F. C. MARTIN ET ALS., Respondents

T. W. DAVIS,

T. J. WILLS,

Attorneys for Petitioners.



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**IN THE
SUPREME COURT OF THE
UNITED STATES OF AMERICA**

**EDWARD HINES YELLOW PINE TRUSTEES,
Petitioners,**

vs.

ANNA F. C. MARTIN ET ALS., Respondents

To the Honorable the Supreme Court of the United States:

The petition of the Edward Hines Yellow Pine Trustees composed of Edward Hines, C. F. Wiehe and L. L. Barth, trustees under trust agreement executed under the name of the Edward Hines Yellow Pine Trustees, petitioners, would most respectfully show to this Honorable Court:

(1). That they filed in the District Court of the United States for the Southern Division of the Southern District of Mississippi four bills in equity on, to-wit, the 15th day of October, 1922. That the said four bills in equity were respectively against Anna F. C. Martin, F. C. Martin, H. P. Lewis and George Lawrence. The said bills in equity prayed for the cancellation of the outstanding deeds and evidences of title held by the four aforementioned defendants to the Southeast Quarter of the Southeast Quarter and Northeast Quarter of the Southeast Quarter and the Southwest Quarter of the Southwest Quarter, Southeast Quarter of the Northwest Quarter, all

in Section 36, Township 2, South of Range 15 West, in Pearl River County, Mississippi; and for the confirmation of complainants' title to the above described land.

(2). The four bills of complaint filed in the District Court were in substantially the same language, except as to the parties defendant and the land embraced therein. Complaints deraigned their title from the United States Government The Act of Congress of September 28th, 1850, known as the Swamp and Overflowed Land Act, donated the said lands to the State of Mississippi. That by Act of the Legislature of the State of Mississippi of April 8, 1871, the said lands were donated to the Pearl River Improvement and Navigation Company, and under said Act on the 27th day of June, 1871, patent from the said State of Mississippi was duly executed and delivered to the said company. That on the 20th day of November, 1872, said Pearl River Improvement and Navigation Company sold, and for a valuable consideration, conveyed said lands to M S. Baldwin; that on the 17th day of April, 1873, M. S. Baldwin, for a valuable consideration, sold and conveyed the land to Israel Hall; that on April 30, 1889, said Israel Hall died testate, by which testamentary instrument he devised the said lands to his wife, Olivia B. Hall; that on the 23rd of July, 1900, Olivia B. Hall conveyed the said lands to Charlotte H. Eastman; that on July 5, 1905, Charlotte H. Eastman conveyed the said lands to the Wyatt Lumber Company, and on January 1, 1918, Wyatt Lumber Company conveyed the said lands to the complainants, petitioners herein.

(3). The bill of complaint further set forth that the State of Mississippi, by a junior patent of December 7, 1883, patented said lands to Mose Mitchell; and that by mesne conveyances, the said Mose Mitchell had attempted to convey the said lands to the defendants named in the said bills of complaint; and that said conveyances operated as a cloud upon complainants' title to said lands.

(4). The bills of complaint further set forth that the record title through which the defendants asserted the pretended claim, passed through the Southern Pine Company; that in 1900, while Olivia B. Hall was the owner of the said lands, together with other lands coming by the same chain of title to her, and long prior to the time when complainants acquired the title thereto, the validity of the said title and the validity of the patent issued on the 27th day of June, 1871, under and by virtue of the authority of the Acts of the Legislature of the State of Mississippi of April 8, 1871, was litigated in the District Court of the United States for the Southern Division of the Southern District of Mississippi. That said litigation resulted in a decree being entered adjudicating the said patent to be valid and the title in Olivia B. Hall held under said patent to be the true, legal and equitable title to said lands. The bills of complaint further charge that thereafter the said decree was upheld by the Circuit Court of Appeals of the Fifth Circuit, and the decree of the District Court affirmed in the case of Southern Pine Company vs. Hall, 105 Federal P. 84; 44 C. C. A., P. 363; and that the said decree of the District Court and the judgment of the Circuit of Appeals affirming the same was upheld by the Supreme Court of the United States in the same case reported in 180 U. S., P. 639.

(5). The bills of complaint then charge that complainants and their immediate and remote grantors bought the said lands for a valuable consideration and in good faith and upon a clean record title from the State of Mississippi, predicated upon a patent from the State of Mississippi, antedating the patent upon which defendants claim, and as such they were innocent purchasers; and that the said patent and the conveyance through which they claim constituted a contract between the said State of Mississippi and the Pearl River Improvement and Navigation Company, and is the contract receiving judicial sanction, upon which complainants relied in purchasing the said lands as heretofore set out.

(6). The jurisdictional amount giving the Federal Court jurisdiction and the diversity of citizenship were shown. The prayer for relief asked that the defendants be required to answer, setting up specifically their claim of title and praying that the said evidences of pretended title of defendants be cancelled as clouds upon complainants' title and complainants decreed to be the sole and only real, true and legal owners of said lands.

(7). The defendants answered and set up their title under the patent from the State of Mississippi to Mose Mitchell and a perfect record chain of title from the said Mose Mitchell to the defendants. Defendants asserted the validity of their title and attacked the validity of complainants' title, asserting that the patent from the State of Mississippi to the Pearl River Improvement and Navigation Company was null and void.

(8). There was an agreed statement of facts in which the chains of title were admitted in the complainants as alleged and in the defendants as set forth. It was further agreed that the patent under which complainants claimed was the same patent adjudicated to be a good and valid patent in Southern Pine Company vs. Hall, by the District Court of the United States and affirmed by the Circuit Court of Appeals, and the Supreme Court of the United States, as hereinbefore referred to. The cases were then consolidated by the district judge and heard upon the bill and answer and the agreed statement of facts. A decree was entered on the 13th day of June, 1923, A. D., in said District Court as follows:

"This day there came on to be heard before the Court, upon agreement entered in open Court by the parties to the four above styled and numbered causes that the same should be consolidated and tried together, and that one decree should be entered herein making final disposition of said four consoli-

dated causes, the above numbered and styled four consolidated causes, the same having come on to be heard upon the bill and answer in each case, the agreed statement of facts this day filed in said causes, and the documentary evidence referred to in said agreed statement of facts, viz, the patent from the State of Mississippi to Pearl River Improvement and Navigation Company offered in evidence by complainant and filed this day by the Clerk of this Court, and the patent from the State of Mississippi to Mose Mitchell offered in evidence by the defendants in each case and also the map of Pearl River County offered in evidence by the defendant in each case and both filed this day by the Clerk of this Court; and the Court having heard and considered the same, and having heard and considered the arguments of counsel, is of the opinion that the complainants are not vested with the title to the lands described in either of said suits, but that the defendant named in each suit is vested with title to the lands described in each suit, and that complainants are not entitled to the relief prayed for in either of said suits;

"It is, therefore, ordered, adjudged and decreed that the complainants are not the owners of the lands involved in said cause No. 221 and therein described as NE Quarter of SE Quarter of Section 36 in Township 2 South, Range 15 West, but that the defendant in said cause, Anna F. C. Martin, is the owner thereof; and further that the complainants are not the owners of the lands involved in said cause No. 222 and therein described as SE Quarter of SE.

Quarter of Section 36 in Township 2 South, Range 15 West, but that the defendant in said cause, Francis C. Martin, is the owner thereof; and further that the complainants are not the owners of the land involved in said cause No. 223 and therein described as SW Quarter of NW Quarter of Section 36 in Township 2 South, Range 15 West, but that the defendant in said cause, H. P. Lewis, is the owner thereof; and further that the complainants are not the owners of the lands involved in said cause No. 224 and therein described as SE Quarter of NW Quarter of Section 2 South, Range 15 West, but that the defendant in said cause, George Lawrence, is the owner thereof;

"It is further ordered that the said complainants be and they are hereby denied the relief prayed for in each of the said causes, and that said causes and each of them be and the same are hereby dismissed at the cost, in each case, of the said complainants for all of which let proper process issue, to which action of the Court, complainants then and there excepted.

"Ordered, adjudged and decreed this June 13th, A. D. 1923.

"E. R. HOLNES,
District Judge."

(9). That thereafter, to-wit, on the 19th day of June, 1923, an appeal was allowed and perfected, and on the 13th day of August, 1923, a transcript of all the proceedings was filed in the United States Circuit Court of Appeals for the Fifth Circuit, sitting at New Orleans, Louisiana, and said cause was entered and docketed in said Court of Appeals entitled "EDWARD HINES YEL-

LOW PINE TRUSTEES, APPELLANTS, VS. ANNA F. C. MARTIN ET ALS., APPELLEES," and numbered 4181 on said docket.

(10). That the assignment of error filed in said cause was as follows:

"Come the complainants, the Edward Hines Yellow Pine Trustees, by their solicitors, and assign the following errors upon which they will rely for the prosecution of an appeal in this cause, from a decree made and entered in this Court on the 13th day of June, 1923.

"First. The District Court erred in denying the relief prayed for by complainants and in dismissing the bills of complaint.

"Second. The District Court erred in holding that the defendant named in each suit is vested with the title to the lands described in said suits.

"Third. The District Court erred in overruling the decision of the Circuit Court of Appeals, in the case of the Southern Pine Company vs. Hall, reported in 105 Federal Reporter, P. 84.

"Third. The District Court erred in overruling the decision of the Circuit Court of Appeals, in the case of the Southern Pine Company vs. Hall, reported in 105 Federal Reporter, P. 84.

"Fourth. The District Court erred in holding that it was bound by the decisions of the Supreme Court of the State of Mississippi, and in following said decisions to the extent of overruling the said case of the

Southern Pine Company vs. Hall, supra, and the opinion of the Supreme Court of the United States, dismissing the writ of error in said cause.

"Fifth. The District Court erred in refusing to follow the decision of the Southern Pine Company vs. Hall, supra, holding that the patent from the State of Mississippi to the Pearl River Improvement and Navigation Company was a valid patent, which same patent was in issue in this case, and which decision in the case of Southern Pine Company vs. Hall, had become a rule of property, and by which decree of the Court entered in this cause holding said patent void is in violation of the rights of complainants in holding the land conveyed in said patents as a rule of property, under which the said complainants acquired a title to said lands

"Wherefore, the said complainants herein pray that the said decree be reversed, vacated and set aside, and the said cause be remanded, with direction to the District Court to grant complainants the relief sought in the bills of complaint, and prayed for in the prayer thereto."

(10). That afterwards, to-wit, on the 8th day of January, 1924, the case came on to be heard in the Circuit Court of Appeals before the Honorable Richard Walker, the Honorable Nathan P. Bryan, Circuit judges, and the Honorable Rhydon M. Call, District Judge, sitting. That on the 16th day of January, 1924, a decree was entered in said cause by the Circuit Court of Appeals of the Fifth Circuit as follows:

"This cause came on to be heard on the transcript of the record from the District

Court of the United States for the Southern District of Mississippi, and was argued by counsel;

"On consideration whereof, It is now here ordered, adjudged and decreed by this Court, that the decree of the said District Court in this cause, be, and the same is hereby affirmed.

"It is further ordered, adjudged and decreed that the appellant, Edward Hines Yellow Pine Trustees, and the sureties on the appeal bond herein, W. L. Wallace, T. W. Davis and T. J. Wills, be condemned, in solido, to pay the costs of this cause in this Court, for which execution may be issued out of the said District Court."

A copy of the opinion rendered in said cause is attached and marked Appendix "A" to this petition.

(11). Your petitioners are advised that said judgment of the Circuit Court of Appeals is erroneous; and that this Honorable Court should require the case to be certified to it for its review and determination under the Acts of Congress permitting causes made final in the Circuit Court of Appeals to be certified for revision, and especially Section 240 of the Judicial Code, Second Federal Statutes Annotated (second edition), P. 854.

(12). The reasons why the decree of the Circuit Court of Appeals, affirming the decree of the District Court, should be reviewed by the Supreme Court of the United States are as follows:

(13). The decree of the Circuit Court of Appeals affirming the decree of the District Court, denying the relief prayed for in the original bill of complaint and decreeing that the defendants in said bill were the real, true, legal and equitable owners of the land, and in dismissing

the bill of complaint, has overruled a rule of property announced in the case of Southern Pine Company vs. Hall in 105 FEDERAL REPORTER, P. 84, and has deprived complainants of their property acquired under and by virtue of the decision of the Circuit Court of Appeals in said case after the said case was decided and the rule of property announced thereby had become effective. Complainants are citizens of Illinois. Under the rule of property announced in the case of Southern Pine Company vs. Hall and the interpretation by the Court of the validity of the patent there involved, and upon which the title to the land embraced in this case rests, complainants purchased said lands upon the faith and credit of the integrity of that decision.

(14). The construction and judicial determination of the validity or invalidity of the patent upon which the title of complainants was bottomed, did not involve the interpretation of the constitution or statute of the State of Mississippi. Prior to the decision of the Circuit Court of Appeals in the Southern Pine Company case, the case of Hardy vs. Hartman, 65 MISSISSIPPI 509, was decided by the Supreme Court of the State of Mississippi. Hardy vs. Hartman was an interpretation and characterization by the state court of an instrument that had been filed and designated as the bond of the Pearl River Improvement and Navigation Company. The court held that as a matter of general and commercial law the instrument in question was not a bond, and, therefore, the title to the lands did not pass to the company by virtue of the Act of April 8, 1871. No patent had ever issued for the lands under consideration in Hardy vs. Hartman. The Court said, however, that if a patent had issued, it would be void. Thereafter, the case of Southern Pine Company vs. Hall came on for a consideration by the United States Circuit Court of Appeals. The Circuit Court of Appeals reviewed Hardy vs. Hartman and held that the Court had not construed a constitution or statute, but rather had given an interpretation of an instrument under the gen-

eral and commercial law. The Circuit Court of Appeals exercised an independent judgment and placed its own interpretation upon the instrument under the general and on commercial law, which governs cases before it for review. The Circuit Court of Appeals used this language in reference to Hardy vs. Hartman:

"This case, we think, can not be held a judicial construction of the statutes here involved."

The Circuit Court of Appeals held that the instrument ment was a bond, and the patent was valid and passed title. This decision of the Circuit Court of Appeals not only adjudicated the validity of the title to the lands presented in that case, but also the validity of the title to all lands owned by the appellees botttomed upon the patent under consideration.

(15). With this decision of the Circuit Court of Appeals, which has been approved by the Supreme Court of the United States, adjudicating the validity of the patent, complainants purchased the lands in question, relying upon the rule of property announced, and the stability of the opinion of the United States Court in the exercise of its independent judgment in passing upon matters of general and commercial law. They relied upon that authority announced by the Supreme Court of the United States, that in such matters of general and commercial law the United States Courts would exercise their independent judgment. The action of the Circuit Court of Appeals in affirming the decree of the District Court in following Hardy vs. Hartman and refusing to follow Southern Pine Company vs. Hall, has overturned the rule of property announced heretofore by the United States Courts and relied upon by complainants when they purchased the said lands, and thereby has deprived them of their property in violation of their rights guaranteed by the Constitution and laws of the United States. The decision of the Circuit Court of Appeals leaves it an open question

whether federal courts will protect property rights accruing under their decision when it has said positively that it refused to follow the decision of the state court, or whether, after the said property rights have accrued and the state court adheres to its opinion, that the federal courts will treat its own jurisdiction as that of subordinate jurisdiction to the state court, reverse itself and overturn the property rights accruing under its previous decision. To settle this question, this court should review the decision of the Circuit Court of Appeals.

(16). A further reason why this Court should review and reverse the decision of the Circuit Court of Appeals is that the decisions of the Supreme Court of the State of Mississippi were not controlling on that question of title presented in this case. The patent to the Pearl River Improvement and Navigation Company was issued under Chapter of the Laws of Mississippi approved April 8, 1871. Thereafter on November 20, 1872, the Pearl River Improvement and Navigation Company conveyed the lands for a valuable consideration, which conveyance is in the chain of title under which the petitioners herein claim title to said lands. Chapter 114 of the Laws of Mississippi, approved April 19, 1873, approved and ratified the deeds of conveyance previously made by the Pearl River Improvement and Navigation Company and confirmed the title passing thereunder. As to all other lands embraced in the patents, it sought to divest The Pearl River Improvement and Navigation Company of the title thereto. The title to the lands under consideration in the case of *Hardy vs. Hartman*, 65 Mississippi 505, was held under a tax sale of lands patented to the Pearl River Improvement and Navigation Company and abandoned by that company under the provision of the Act of 1873. The lands in that case were not conveyed by the Pearl River Improvement and Navigation Company; and the Act of 1873 in no wise ratified or confirmed said title. The same is true of the title in *Becker vs. Columbia Bank*, 73 Southern Reporter 798. The Supreme Court of the

State of Mississippi has never passed upon the question of the validity of the title to lands held under the Pearl River Improvement and Navigation Company title which had been conveyed prior to the enactment of Chapter 114 of the Acts of 1873. Southern Pine Company vs. Hall passed upon the title of lands so situated. That case passed upon lands similarly situated, to the lands under consideration in this case. The Circuit Court of Appeals in overruling its former decision in Southern Pine Company vs. Hall and in following Hardy vs. Hartman and the Becker case overruled a decision in point and followed the two decisions of the state court that were not in point and not controlling.

(17). WHEREFORE, Your petitioners respectfully pray that a writ of certiorari be issued under the seal of the Court, directed to the United States Circuit Court of Appeals for the Fifth Circuit, sitting at New Orleans, Louisiana, commanding the Court to certify and send to this Court on a day certain to be designated, a full and complete transcript of the record and all proceedings of the Circuit Court of Appeals had in this cause, to the end that this cause may be reviewed and determined by this Honorable Court as provided by the Acts of Congress approved March 3, 1891, establishing the Circuit Court of Appeals, and defining and regulating their jurisdiction, and any subsequent acts, amendatory or supplementary, thereto; and that the said judgment of the Circuit Court of Appeals be reversed by this Honorable Court; and for such further relief as may seem proper; and as in duty bound your petitioners will ever pray.

T. J. WILLS,
Attorney for Petitioners.

STATE OF MISSISSIPPI

FORREST COUNTY

CITY OF HATTIESBURG.

This day personally appeared before me, a notary public in and for the city of Hattiesburg in the County and state aforesaid, I being an officer authorized under the laws of the State of Mississippi to administer oaths, T. J. Wills, who after being by me first duly sworn, says on oath that he is the attorney for the Edward Hines Yellow Pine Trustees and is authorized to and does make this affidavit on behalf of said trustees; that the matters and things stated in the foregoing petition are all true and correct as stated, as far as he is advised and believes; and that said petition in his opinion ought to be sustained.

T. J. WILLS.

Given under my hand and official seal this 26th day of March, A. D., 1924.

CLOTHILDE LINDSEY,

Notary Public.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF

CERTIORARI

The petitioners seek to have this Court review the decision of the Circuit Court of Appeals, affirming the decree of the District Court for the Southern Division of the Southern District of the State of Mississippi. The District Court entered the decree on the 13th day of June, 1923, in which it denied the relief prayed for in the bills of complaint. Complainants prosecuted an appeal to the Circuit Court of Appeals, where the case was affirmed on the 16th day of January, 1924. Thereafter a petition for rehearing was filed, and on the 20th day of February, 1924 the petition was denied and the decree of the court made final.

STATEMENT OF THE PLEADINGS

On the 12th day of October, 1922, the petitioners filed their bills of complaint in the District Court of the United States, praying for the cancellation of outstanding deeds and record evidences of title as clouds upon their title and praying that they be decreed the sole and only, true, legal and equitable owners of the land therein described. The bills of complaint alleged that petitioners' title came from the United States government under Act of September 28, 1850, known as the Swamp and Overflowed Land Act to the State of Mississippi, and patent from the State of Mississippi dated June 27, 1871, to the Pearl River Improvement and Navigation Company, and by mesne conveyances therefrom to petitioners. The bills further alleged that the State of Mississippi issued a junior patent on December 7, 1883, to Mose Mitchell, and that thereafter Mose Mitchell executed a deed purporting to convey said lands, and by instruments subsequently executed, the pretended title of Mose Mitchell passed to

respondents. It was to cancel this junior patent and the conveyances thereunder that the bills in equity were filed in the District Court.

Petitioners in their bills derainged their title from the United States to the State of Mississippi by Act of September, 28, 1850; from the State of Mississippi to the Pearl River Improvement and Navigation Company by patent dated June 27, 1871, authorized by Act of the Legislature of April 7, 1871; that the Pearl River Improvement and Navigation Company, on November 20, 1872, for a valuable consideration, conveyed the said lands to M. S. Baldwin; that on the 17th day of April, 1873, M. S. Baldwin conveyed to Israel Hall; that on April 30, 1889, Israel Hall died, leaving a last will and testament, in which he devised the said lands to his wife, Olivia B. Hall. That on the 23rd of July, 1900, Olivia B. Hall conveyed the said lands to Charlotte H. Eastman; that on July 5, 1905, Charlotte H. Eastman conveyed to the Wyatt Lumber Company; that on January 1, 1918, the Wyatt Lumber Company conveyed to the complainants in the court below.

(There were four original bills filed in the District Court against four separate defendants for the different lands described in the said bills of complaint. The chain of title to complainants as to each separate tract of land was the same, and the chain of title through which the defendants claimed, was identical down to the deed under which each separate defendant held, the grantor in each deed to the defendants being the same.

The defendants filed their separate answers, in which they denied that the complainants were the owners of the said land, and set up title in themselves.

When the causes came on for a hearing, the four cases were consolidated and tried on an agreed statement of facts. The District Court denied the relief prayed for, and decreed that the defendants were the owners of the

lands. The District Court rested its decree on the authority of the decisions of the Supreme Court of the State of Mississippi, overruling the decisions of the Circuit Court of Appeals, which had formerly adjudicated the validity of the said Pearl River Improvement and Navigation Company's patent.

STATEMENT OF FACTS

The case was tried on an agreed statement of facts. The material facts agreed on are these: First, That the complainants derived their title by mesne conveyances from the Pearl River Improvement and Navigation Company, and whatever title that company had under and by virtue of its patent passed to and was held by complainants. It was further agreed that the introduction of evidence by the complainants of the chain of title from the Pearl River Improvement and Navigation Company to complainants was waived. It was further agreed that the patent to the Pearl River Improvement and Navigation Company is the same patent, which was involved in the case of the Southern Pine Company vs. Hall, reported in 105 **Federal Reporter**, P. 84, and the case of Becker vs. the Columbia Bank, 73 **Southern Reporter**, P. 798; but that the lands embraced in the four suits were not involved in either of said suits. The patent from the State to the Pearl River Improvement and Navigation Company was introduced by agreement.

By the agreement it is admitted that the patent under consideration is the same patent considered in Southern Pine Company vs. Hall. The deraignment of title shows that the Pearl River Improvement and Navigation Company parted with the title to this land for a valuable consideration on November 20, 1872. It will further appear by reference to the Hall case, supra, and the deraignment of title that Olivia B. Hall owned the land at the time the Hall case was decided by the Circuit Court of Appeals.

The bill of complaint charges that she owned it, and that it was by inadvertence that the lands were omitted from the bill of complaint in that suit.

The Circuit Court of Appeals stated in its opinion that the District Judge followed the decisions of the Supreme Court of Mississippi in the construction of the Act of the Mississippi Legislature of 1871, rather than the decision of the Circuit Court of Appeals in *Southern Pine Company vs. Hall*.

The Circuit Court of Appeals refused to follow its own decision in the case of *Southern Pine Company vs. Hall*. It overruled that case and followed *Hardy vs. Hartman*, 65 *Mississippi* 505, and *Becker vs. the Columbia Bank*, 73 *Southern Reporter* 798. The Circuit Court of Appeals affirmed the decree of the District Court.

ARGUMENT

COMPLAINANT'S TITLE IS A GOOD AND VALID TITLE. *HARDY VS. HARTMAN* AND *BECKER VS. THE COLUMBIA BANK* ARE NOT APPLICABLE TO THE CASE AT BAR.

The State of Mississippi patented the lands involved here to the Pearl River Improvement and Navigation Company under and by virtue of the Act of April 8, 1871. A copy of the said act is filed as Appendix "B" to this brief. The patent issued on June 27, 1871, is regular in form and was duly recorded. On November 20, 1872, the Pearl River Improvement and Navigation Company, for a valuable consideration, sold the lands here in question to Baldwin. Baldwin, on April 17, 1873, for a valuable consideration, sold and conveyed the said lands to Israel Hall.

On April 19, 1873, Israel Hall was the owner of the said lands by mesne conveyances from the Pearl River Improvement and Navigation Company.

The Legislature of the State of Mississippi enacted Chapter 114 of the Acts of 1873, which act became a law on April 19, 1873. The State by this act legalized, ratified and confirmed the deeds previously made by the Pearl River Improvement and Navigation Company to land, which had passed to it under the Acts of April 8, 1871. A copy of Chapter 114 of the Laws of 1873 is exhibited as Appendix "C" to this brief.

Section 1, Chapter 114 of the laws of 1873 provided that the said Pearl River Improvement and Navigation Company should pay into the state treasury on or before the first day of October, 1873, twenty-five cents per acre for the land which had been patented to said company. It further provided that upon the payment of twenty-five cents per acre, patent should issue for all the lands embraced in the grant and not previously patented. By Section 4 of the said act, it provided that if said payments, as referred to in the first section, are not made, then all the right, title and interest of the company reverted to the State, and by the provision of the act, should rest absolute in the State. Section 5 provided for the surrender of the patents to the Secretary of the State to be redelivered to the company upon its compliance with the provisions of the act in paying the twenty-five cents per acre.

The Pearl River Improvement and Navigation Company, at the time of the enactment of Chapter 114 of the Laws of 1873, had sold and conveyed part of the lands previously patented to it. The lands embraced in this suit had been sold by said company and deed executed therefor to Baldwin. By Section 6 of the said act, the

Legislature protected the purchasers of these lands by legalizing, ratifying and confirming the deeds made by the Pearl River Improvement and Navigation Company.

In *Hardy vs. Hartman*, decided May 31, 1888, Hardy claimed title to the lands there involved under the Act of 1871, granting the lands to the Pearl River Improvement and Navigation Company and a tax sale thereafter in which the said lands were sold to the State of Mississippi and a purchase by him of the said tax title from the State. Hartman's title rested upon a subsequent patent from the State of Mississippi to him.

The lands embraced in the Hartman case were never sold by the Pearl River Improvement and Navigation Company. The legal and logical conclusion to be deduced is that the twenty-five cents per acre was never paid by the Pearl River Improvement and Navigation Company; That the Secretary of the State never redelivered the patents to the said company. The lands abandoned by the said company, and subsequent thereto were sold for taxes.

Under Chapter 114 of the Acts of 1873, the lands donated to the Pearl River Improvement and Navigation Company by the Act of 1871 were divided into two classes and dealt with as such. The first class of lands dealt with were those lands granted to the Pearl River Improvement and Navigation Company, which had not been alienated by it. The second class were those lands donated by the said Pearl River Improvement and Navigation Company, and which the said company sold and conveyed prior to the passage of the said act.

In the Hartman case, the Supreme Court of the State of Mississippi was dealing with those lands coming within the first classification of the act. No patent was shown to have issued to the Pearl River Improvement and Navigation Company, and in the absence of a patent, no title

passed under Chapter 114 of the Acts of 1873. It is true that no reference is made to the laws of 1873 in the opinion of the Court in the Hartman case. But the reason for the result reached can be justified under this law.

In the case of Becker vs. the Columbia Bank, *supra*, the title to the land under consideration was identical with that in the Hartman case. Both cases were passing upon those lands, embraced within the grant to the Pearl River Improvement and Navigation Company and never alienated by that company.

The lands involved in this suit came within the second class of lands dealt with in the Acts of 1873. The sale of the Pearl River Improvement and Navigation Company was specifically ratified and confirmed by Section 6 of the act. Whatever defects or invalidities that might have attached to the original patent were cured by this legislative ratification.

Southern Pine Company vs. Hall, *supra*, was dealing with the lands embraced in the second class and identical in title with the lands here under consideration. The Hall case is the only case in any court that has ever passed upon the title to lands situated and classified as are these lands. The Hall case is controlling on the point presented in the case at bar.

THE FEDERAL COURT EXERCISED ITS INDEPENDENT JUDGMENT IN CONSTRUING THE BOND IN THE HALL CASE, AND IS NOT NOW REQUIRED TO ABANDON ITS FORMER OPINION AND FOLLOW THE STATE COURT.

It is a well settled rule of law that the federal courts follow the decisions of the State court in construing a constitution or statute of the state, or decisions of the state court, which have become rules of property.

Jackson vs. Chew ,12 Wheat 153; and the line of decisions following this rule.

There is an equally well settled rule, that as to questions of general and commercial law, and where property

rights have vested before the decisions of the state courts are rendered, that the **federal** courts exercise their independent judgment.

Burgess vs. Seligman, 107 U. S., 20; and the line of cases following it.

In the case of **Hardy vs. Hartman**, the Supreme Court of Mississippi considered the instrument filed, purporting to be the bond required by the statute donating the lands to the Pearl River Improvement and Navigation Company. The construction of the instrument required a consideration of the general and commercial law in the constructions of contractual obligations. The state court held that that instrument was not the bond of the Pearl River Improvement and Navigation Company. When the Circuit Court of Appeals came to consider the same question in the Hall case, it refused to follow the case of **Hardy vs. Hartman**. The Circuit Court of Appeals exercised its independent judgment in passing upon the instrument purporting to be a bond, and in protecting the rights that had accrued prior to the decision of **Hardy vs. Hartman**. The Circuit Court of Appeals held that the patent was a valid and binding instrument, and the title to the lands conveyed on November 20, 1872, by the Pearl River Improvement and Navigation Company to be a good and valid title.

Michigan Central Railroad Co. vs. Myrich, 107 U. S. 102.

The decision of **Southern Pine Company vs. Hall** established a rule of property. The Circuit Court of Appeals in the Hall case reviewed **Hardy vs. Hartman**, and used this language:

"This case, we think, can not be held a judicial construction of the statute on the point here involved. If it should be so considered, although we have great respect for the conclusion of that able and impartial court, we should be required, on the facts of

this case, to exercise an independent judgment in the construction of the statute in question. The appellee in this case having acquired the rights herein asserted before the decision of the Supreme Court of Mississippi just cited, was rendered, she is entitled to invoke the independent judgment of this court as to the proper construction of the statute." Citing *Burgess vs. Seligman*, 107 U. S. 20.

See to the same effect:

Kuhn vs. Fairmount Coal Co., 215 U. S. 349.

THE HALL CASE BECAME A RULE OF PROPERTY.

It is to be observed by reference to the chain of title set out in the opinion in the Hall case and the chain of title pleaded by complainants herein, that the lands embraced in the Hall case and the lands embraced in this case passed from the Pearl River Improvement and Navigation Company to Baldwin by the same deed; and passed from Baldwin to Israel Hall by the same deed; and passed from Israel Hall to Olivia B. Hall by the same last will and testament. Whatever rights Olivia B. Hall had to the lands under consideration by the Circuit Court of Appeals in the Hall case, she had the same right under the same law and facts to the land under consideration in this case. If her title to the lands embraced in litigation in the Hall case was a good title, then her title to the lands embraced in this case was an equally good title. The decision of the Circuit Court of Appeals in the Hall case became a rule of property as to all the lands vested in her by these conveyances.

This court said in *Harris vs. Runnels*, 5 Howard 134:

"Acting under the opinion thus deliberately given by this Court, we can hardly be required by any comity or respect for the state courts to surrender our judgment to de-

cisions since made in the state, and upon full consideration we have pronounced to be valid."

See also:

Pease vs. Peck, 18 Howard 595.

Anderson vs. Santa Anna, 116 U. S. 356.

Carroll County vs. Smith, 111 U. S. 556.

Loeb vs. Trustees, 179 U. S. 449.

It was upon the faith and credit of the decision of the Circuit Court of Appeals in the Hall case that Olivia B. Hall's title to these lands became and was merchantable and valuable. The complainants in this case purchased the lands upon the faith and credit of that decision. If Olivia B. Hall's title was good because of the vesting of contractual rights in the sale from the Pearl River Improvement and Navigation Company to Baldwin in 1872, then she could pass to subsequent vendees an equally good and valid title. It was the duty of the District Court to uphold the title of complainants held by mesne conveyances from Olivia B. Hall, and supported by the decisions of the Circuit Court of Appeals in the Hall case. The District Court, however, refused to follow the Hall case, and chose instead to follow Hardy vs. Hartman. The Circuit Court of Appeals took the same view of the case as did the District Court, and affirmed the decree. The decision of the District Court, as affirmed by the Circuit Court of Appeals, has changed a rule of property, under which complainants acquired their title.

The petition for writ of certiorari should be granted and the case ordered certified to this Court for review, and the judgment of the Circuit Court of Appeals and of the District Court should be reversed, and the case remanded to be tried in accordance with the principles of law applicable to the facts in said cause.

Respectfully submitted:

T. J. WILLS,

Atty. for Petitioners.